

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF )  
JEFFERSON

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Peggy Stolte,

Petitioner,

vs.

NO: 11 WC 47860

14IWCC0101

St. Anthony's Memorial Hospital,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, credit, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 21, 2013, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

1419

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$29,300.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

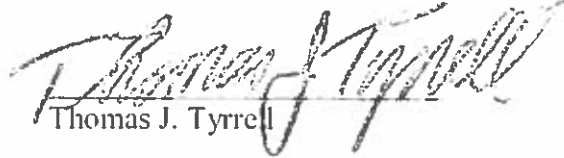
DATED:

FEB 11 2014

TJT:yl

o 1/27/14

51



Thomas J. Tyrrell

  
Kevin W. Lamborn

Daniel R. Donohoo

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

**STOLTE, PEGGY**

Employee/Petitioner

Case# **11WC047860**

**ST ANTHONY'S MEMOIRAL HOSPITAL**

Employer/Respondent

14IWCC0101

On 3/21/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.11% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

3067 KIRKPATRICK LAW OFFICES PC  
ERIC KIRKPATRICK  
#3 EXECUTIVE WOODS CT STE 100  
BELLEVILLE, IL 62226

0734 HEYL ROYSTER VOELKER & ALLEN  
JOHN FLODSTROM ESQ  
PO BOX 129  
URBANA, IL 61803-0129

14IWCC0101

STATE OF ILLINOIS )  
 )SS.  
 COUNTY OF Williamson )

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/>            | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/>            | Rate Adjustment Fund (§8(g))          |
| <input type="checkbox"/>            | Second Injury Fund (§8(e)18)          |
| <input checked="" type="checkbox"/> | None of the above                     |

**ILLINOIS WORKERS' COMPENSATION COMMISSION  
 ARBITRATION DECISION**

**Peggy Stolte**  
 Employee/Petitioner

Case # **11 WC 47860**

v.

Consolidated cases: \_\_\_\_\_

**St. Anthony's Memorial Hospital**  
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Deborah L. Simpson**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **January 11, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

**DISPUTED ISSUES**

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ What temporary benefits are in dispute?  
☐ TPD      ☐ Maintenance      ☐ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☒ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

14IWC0101

**FINDINGS**

On **September 22, 2010**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$20,218.12**; the average weekly wage was **\$388.81**.

On the date of accident, Petitioner was **59** years of age, *single* with **0** dependent children.

Petitioner *has* received all reasonable and necessary medical services.

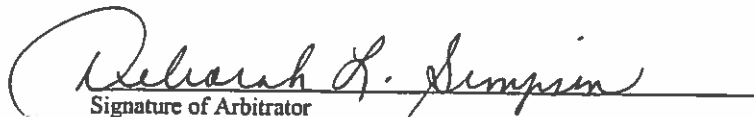
Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

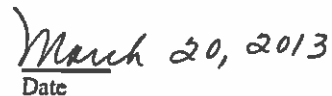
**ORDER**

The Respondent shall pay Petitioner permanent partial disability benefits of \$233.29 /week for 125 weeks, because the injuries sustained caused the 25% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
Signature of Arbitrator

  
Date

MAR 21 2013

**BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION****Peggy Stolte,****Petitioner,****vs.****St. Anthony's Memorial Hospital,****Respondent.****No. 11 WC 47860****FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

The parties agree that on September 22, 2010, the Petitioner and the Respondent were operating under the Illinois Worker's Compensation or Occupational Diseases Act and that their relationship was one of employee and employer. On that date the Petitioner sustained an accidental injury or was last exposed to an occupational disease that arose out of and in the course of the employment. They further agree that the Petitioner gave the Respondent notice of the accident within the time limits stated in the Act.

At issue in this hearing is as follows: (1) Is the Petitioner's current condition of ill-being causally connected to this injury or exposure; (2) Were the medical services that were provided to the Petitioner reasonable and necessary; (3) Has the Respondent paid all appropriate charges for all reasonable and necessary medical services; (4) What is the nature and extent of the injury; and (5) Is the Respondent due any credit.

**STATEMENT OF FACTS**

On September 22, 2010, the Petitioner was employed by the Respondent as a laundry technician in the linen department. On that date she was lifting some bedspreads that were clean, folded and packaged together. When she lifted the spreads from where they were stacked overhead the cart she was going to place them on moved, they started to fall backwards, she was able to prevent herself as well as the bedspreads from falling, however the movement caused pain to her lower back that developed into pain down her right leg and into her foot. The Petitioner is claiming an injury to her back from turning to catch the falling bedspreads.

The Petitioner has a history of a prior work related injury to her back. She was working for a previous employer when she injured her back in a lifting incident. She was under the care of Dr. Matthew Gornet and underwent a fusion at L4 to S1 in December 2003. (Pet. Ex. #3).

The Petitioner testified that she had continuing symptoms in her right leg following the surgery in December 2003, and prior to the claimed work accident of September 22, 2010. Specifically, she had ongoing numbness in her right calf and the toes of her right foot. She testified that she had been able to return to her regular job, full duty after the fusion surgery in 2003, and was able to perform all her duties. She acknowledged during her testimony that she was seen by her primary care physician at the Altamont Clinic on December 12, 2008. Her symptoms included right leg pain and back pain.

The Petitioner testified that when she was lifting some bedspreads they fell and she twisted her back while attempting to catch them. She caught herself with her right arm during the incident, but did not fall to the ground. She stated that she immediately felt burning pain in her lower back that eventually developed into pain radiating down her right leg, around her thigh and down into her right foot. She said that this pain was much stronger than the pain she had experienced in the past. She stated that the pain wrapping around her thigh down her leg was something she had never experienced before the accident.

She received her initial care from a chiropractor, Dr. Stanfield, and later transferred her care to Dr. Rudert at the Bonutti Orthopaedic Clinic. She was later referred to Dr. Matthew Gornet, who had treated her for her prior back injury.

Dr. Stanfield's treatment helped a little with the pain in her shoulder and her upper back, but provided no relief from the low back and leg pain.

Dr. Rudert treated the Petitioner with oral steroids and ordered physical therapy. The Petitioner had six physical therapy sessions and was given a TENS unit but that provided no relief from the back and leg pain.

The first visit with Dr. Gornet (related to the present case) took place on December 13, 2010. (Pet. Ex. #3). Dr. Gornet performed an examination and reviewed some test films. He recommended some treatment and stated in his notes that, "I do believe her current symptoms are causally connected to her work related injury of 9/22/10."

The petitioner remained under Dr. Gornet's care following the initial visit on December 13, 2010.

He stated that her current symptoms were causally related to her accident. He prescribed an epidural steroid injection which was done on December 27, 2010. He sent her for two injections. The injections provided a few days relief of her back pain but it was not permanent relief.

On March 3, 2011 Dr. Gornet noted the new MRI revealed pathology at L2-3 with a central disc protrusion. He recommended a discogram at L3-4 and L2-3. The discogram was performed on April 6, 2011. This discogram revealed a mildly provocative disc at L3-4 with a severely provocative disc at L2-3.

When surgical options were discussed on April 25, 2011 Petitioner was adamant about how her pain and symptoms affected all aspects of her life. Petitioner opted for the two-level spinous process distractor rather than another fusion.

Surgery was performed on June 14, 2011 consisting of a laminotomy at L2-3 and L3-4. "X-stop spinous process distractors" were placed at L2-3 and L3-4.

The Petitioner testified that post surgically she was painful but the pain that had wrapped around her right thigh and down her leg was relieved. Her back pain soon also lessened. The same was reported to Dr. Gornet when he saw her on July 7, 2011.

Dr. Gornet ultimately allowed her to return to work with restrictions which her employer accommodated. On June 25, 2012 these restrictions were made permanent; no lifting greater than 20lbs, alternating between sitting and standing and no repetitive bending or lifting.

On June 25, 2012, she was placed at maximum medical improvement.

The Petitioner testified that her employer does accommodate her permanent restrictions. Petitioner stated she cannot stand for more than 30 minutes or sit for more than 30 minutes at a time. She used to walk for exercise and now walks less; one-half of a mile vs. 1.5 miles. She is unable to do heavy housework such as vacuuming. In fact, she removed the carpet in her house because of her limitation.

Her hobbies have also been affected. She cannot sit and sew as she previously had done. She cannot go camping as before. In addition, she is unable to lift her grandchildren. She is also unable to sleep with her husband and many times sleeps in a recliner.

The respondent has stipulated that the petitioner sustained a work related injury to her back during the accident of September 22, 2010. However, the respondent has disputed that all of the medical care for the petitioner's back, including Dr. Gornet's surgery of June 14, 2011, is causally related to the claimed work accident.

### CONCLUSIONS OF LAW

Thus, if a preexisting condition is aggravated, exacerbated, or accelerated by an accidental injury, the employee is entitled to benefits. *Sisbro supra*. "[A] Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury." *Fierke v. Industrial Commission*, 723 N.E.2d 846 (3<sup>rd</sup> dist. 2000).

**Is the Petitioner's current condition of ill-being causally connected to this injury or exposure?**

Dr. Gornet, after examining the Petitioner and taking a history from her as well reviewed her medical records. In reviewing the MRI of October 12, 2010 felt it showed a potential lateral disc herniation at L2-L3 which correlated with the symptoms that the Petitioner described. He



also felt she had a lateral disc herniation at L3-L4. He asked for a repeat MRI which Dr. Gornet noted the symptoms correlated with pathology at L2-3 and L3-4 and this was also confirmed by CT/discogram. It was the opinion of Dr. Gornet that her condition was causally related to her accident.

Dr. Matz opined that petitioner suffered a lumbar strain from the accident, but that the degenerative conditions in the low back were not related to the injury. He believed that for the work related injury she needed a TENS unit and work hardening. He felt surgery was for the preexisting condition. Dr. Matz's evidence deposition was received into evidence as respondent's Exhibit #1. Dr. Matz testified that he examined the petitioner and reviewed her medical records on January 11, 2012, after the surgery. According to Dr. Matz, and this is confirmed in Dr. Gornet's post-operative diagnosis of "stenosis", the surgery done by Dr. Gornet was done for the purpose of correcting a degenerative condition, lumbar stenosis, and not for any conditions related to the alleged work accident of September 22, 2010. (Resp. Ex. #1 at pg. 11). Dr. Matz concluded the petitioner would have suffered a lumbar strain in the twisting type accident and that that injury would not have created any need for surgical intervention. (Resp. Ex. #1 at pgs. 9-10).

When asked on cross-examination whether the lumbar strain he diagnosed, when superimposed on preexisting conditions could have caused those to become symptomatic he testified he expected that for the stretching to have irritated the nerve he would have expected the foramina to be critically tight. He then agreed that the surgical report of Dr. Gornet noted that the foramen was released as it was compressing the right sided nerve.

Significantly, Petitioner testified to the immediate onset of severe low back and then pain that she had never had before; pain down her right leg that wrapped around her thigh. Her quality of life deteriorated after this accident. Most significant is the fact that Petitioner testified to relief of her symptoms after her surgery.

The Respondent paid TTD and agreed to pay medical bills but disputes causation based upon the opinions expressed by Dr. Matz. This arbitrator finds the testimony of the Petitioner supports the opinion expressed by Dr. Gornet. This arbitrator finds that surgery was related to the accident and was necessary to relieve its effects. The Petitioner has sustained her burden of proving a causal relationship.

**Were the medical services that were provided to the Petitioner reasonable and necessary? Is the Respondent entitled to any credit?**

Based upon the reasoning above and the testimony of Dr. Gornet that the treatment was reasonable and necessary and the agreement of Dr. Matz that Dr. Gornet's treatment was appropriate for the spinal stenosis the Arbitrator finds that the medical services provided to the Petitioner were reasonable and necessary.

There is no evidence offered to establish that there are any outstanding unpaid medical bills or that there is any outstanding TTD owed. Since the Petitioner's condition of ill being was causally connected to the injury she sustained the Respondent would have been responsible for

the bills and the TTD which the Petitioner agreed were paid. The Respondent is not entitled to any credit against the PPD award.

**What is the nature and extent of the injury?**

The permanent restrictions placed upon the Petitioner are significant; no lifting greater than 20lbs, alternating between sitting and standing and no repetitive bending or lifting. The Respondent is accommodating these restrictions according to the Petitioner. However the limitations carry over into other aspects of the Petitioner's life. The Petitioner testified that she cannot stand for more than 30 minutes or sit for more than 30 minutes at a time. She used to walk for exercise and now walks less; one-half of a mile vs. 1.5 miles. She is unable to do heavy housework such as vacuuming and has removed the carpet in her house because of her limitation.

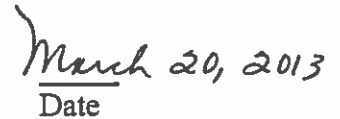
Her hobbies have also been affected. She cannot sit and sew or go camping. She cannot lift her grandchildren. She is also unable to sleep with her husband and many times sleeps in a recliner.

The Petitioner has been left with permanent damage that effects all aspects of her life. This arbitrator finds Petitioner is entitled to an award of 25% loss of a person as a whole.

**ORDER OF THE ARBITRATOR**

Respondent shall pay Petitioner permanent partial disability benefits of \$233.29 /week for 125 weeks, because the injuries sustained caused the 25% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

  
Signature of Arbitrator

  
Date

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF )  
CHAMPAIGN )

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mary J. Deck,

Petitioner,

vs.

NO: 12 WC 9372

14IWCC0102

Freightcar America,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 7, 2013, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

14IWCC0102


IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 11 2014  
TJT:yl  
o 1/28/14  
51

  
Thomas J. Tyrrell

  
Kevin W. Lamborn

  
Daniel R. Donohoo

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF 19(b) DECISION OF ARBITRATOR

**DECK, MARY J**

Employee/Petitioner

Case# **12WC009372**

**FREIGHTCAR AMERICA**

Employer/Respondent

**14IWCC0102**

On 6/7/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0874 FREDERICK HAGLE FRANK & WALSH  
KEVIN E MARKS  
129 W MAIN ST  
URBANA, IL 61801-2714

1872 SPIEGEL & CAHILL PC  
MARTIN T SPIEGEL  
15 SPINNING WHEEL RD SUITE 107  
HINSDALE, IL 60521



STATE OF ILLINOIS )  
 )SS.  
COUNTY OF CHAMPAIGN )

14IWCC0102

☐ Injured Workers' Benefit Fund (§4(d))  
☐ Rate Adjustment Fund (§8(g))  
☐ Second Injury Fund (§8(e)18)  
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION  
19(b)

**MARY J. DECK**

Employee/Petitioner

v.

Case # 12 WC 9372

**FREIGHTCAR AMERICA**

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brandon J. Zanotti**, Arbitrator of the Commission, in the city of **Urbana**, on **April 19, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☒ What was the date of the accident?
- E. ☒ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☒ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☒ TTD
- M. ☒ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☒ Other: 1. Is Dr. Greatting's report admissible?; and 2. Is Petitioner's claim barred by the statute of limitations?

FINDINGS

14IWCC0102

On the date of accident, **August 15, 2011**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$42,366.71**; the average weekly wage was **\$814.74**.

On the date of accident, Petitioner was **48** years of age, *married* with **0** dependent children.

Respondent *has* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$32,211.15** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$32,211.15**.

Respondent is entitled to all applicable credit under Section 8(j) of the Act. The parties stipulated that Respondent is entitled to credit for any medical bills that had been paid by group medical coverage.

ORDER

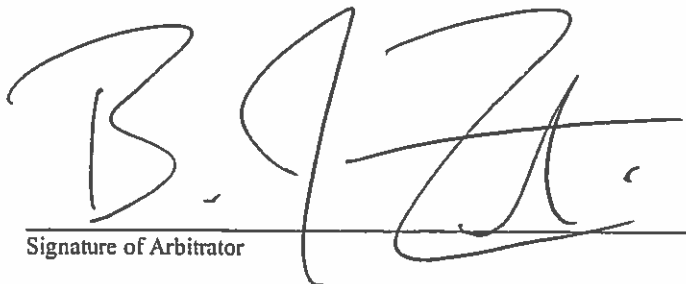
Respondent shall pay Petitioner temporary total disability benefits of **\$543.16/week** for **5 weeks**, commencing **01/07/2013** through **02/11/2013**, as provided in Section 8(b) of the Act.

Respondent shall authorize and pay for a functional capacity evaluation.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
Signature of Arbitrator

06/04/2013  
Date

ICArbDec19(b)

JUN - 7 2013

STATE OF ILLINOIS       )  
                                      ) SS  
COUNTY OF CHAMPAIGN   )

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION

19(b)

14IWCC0102

MARY J. DECK  
Employee/Petitioner

v.

Case # 12 WC 9372

FREIGHTCAR AMERICA  
Employer/Respondent

**MEMORANDUM OF DECISION OF ARBITRATOR**

**FINDINGS OF FACT**

Petitioner, Mary J. Deck, claims repetitive trauma injuries with an August 15, 2011 date of accident. The injuries involve both arms primarily at the elbows. Petitioner testified at hearing with respect to her job duties for her employer, Respondent, Freightcar America. She also testified regarding her pain symptoms and medical care. The only other witnesses, treating surgeon, Dr. James Sobeski, and Respondent's examining doctor, Mark Cohen, testified by evidence depositions. While Respondent had previously paid benefits, the compensability of the injuries was disputed at hearing.

Petitioner worked for Respondent since 2001, and worked as a decaler since 2003. Her job remained essentially the same until the claimed manifestation date of the accident, August 15, 2011. Petitioner testified that each day she pressed different sized decals onto railroad cars. The largest decals were approximately 2.5 x 3 feet in size and required great effort to apply. Petitioner testified that she would use her full body weight for application of the decals. Fifty-one of these decals were applied each day. 459 smaller decals were personally applied daily by Petitioner.

Petitioner testified regarding the application of the decals. Each involved pulling a portion of the backing material away from the decal in order to permit a starting point to apply the decal. Once a portion of the adhesive was exposed, she placed the decal on the railroad car. The decal was pressed against the surface using a roller squeegee with Petitioner's full weight, and the backing material was gradually pulled to permit the decal to adhere to the car. The process was continued until ultimately the entire decal had been applied to the car, pressed, and the backing material removed. This process was executed 510 times per shift. Petitioner conceded that the smaller decals required less force to apply. She testified that the application of decals was constant and



other than a break in the morning and lunch time, she was applying decals throughout the work day. Throughout her shift she used her arms pushing and pulling in order to apply hundreds of decals.

At hearing, Petitioner described and demonstrated the technique she used when applying decals. She testified that she pressed against the decals with the squeegee with her arms in front of her at approximately chest level. She explained that this technique was utilized because it provided her with the leverage necessary to apply the decals. Petitioner's job duties were unchanged since 2003, but she did testify that a change in the decal adhesive in 2011 had made the job harder. She found that the change in decal adhesive resulted in greater difficulty when separating the decal from the backing.

Petitioner testified that her arms had been giving her problems for several weeks around August 2011, but that she tried to work through this difficulty. The pain and difficulty completing her job duties prompted her to notify her supervisor, Joel Rocha, that she was having pain in both of her arms on August 15, 2011. She told Mr. Rocha that she believed her pain was related to her job duties and that it had gotten to the point that she believed she may be injured. She testified that in August 2011 the pain was getting to the point where she was crying at night and dropping items at work.

Respondent sent Petitioner for treatment with Nurse Practitioner Mike Wagner. She reported that she believed her pain was caused by her job duties with Respondent. She was sent for physical therapy and ultimately an EMG study was ordered, which revealed moderate cubital tunnel syndrome bilaterally. (Petitioner's Exhibit (PX) 4, p. 8).

Medical records from Professional Physical Therapy dated August 17, 2011 indicate that Petitioner reported that she "has had problems for many years" but that she "felt that if she reported any injury she would be treated unfairly." (RX 1).

Petitioner was referred to Dr. James Sobeski at Carle Physician Group for care and was first seen on December 5, 2011. She provided the doctor with a history of a work injury, and described her job duties. Dr. Sobeski also testified that he had reviewed an October 27, 2011 independent medical examination (IME) report authored by Dr. Mark Greatting, and this report also provided him with details regarding Petitioner's job duties with Respondent. (PX 4, p. 24). The doctor testified that while he discusses job duties with injured workers, he very rarely goes into great detail in his medical chart. (PX 4, p. 25). He testified he knew Petitioner was a decaler with Respondent in Danville, Illinois. (PX 4, p. 25). Petitioner had described having to push on the decals to apply them to the sides of railroad cars. (PX 4, p. 26). Dr. Sobeski testified that based on everything he has seen and read he knows what Petitioner did with Respondent. (PX 4, pp. 26-27).

Dr. Sobeski testified regarding the causal relationship between Petitioner's job duties with Respondent and her bilateral cubital tunnel syndrome. Dr. Sobeski testified that he was able to render opinions to a reasonable degree of medical certainty based upon the history, physical examination, diagnostics, and his own expertise. (PX 4, p. 29). He testified that he believes Petitioner's bilateral cubital tunnel syndrome was causally related to her job duties with Respondent. (PX 4, 30). He testified as follows: "[t]he basis of the opinion is that she needed to keep her elbow in a flexed position which can aggravate cubital tunnel syndrome and applying forceful things also is putting a fair amount of force through her elbow." (PX 4, p. 30).

Dr. Sobeski diagnosed Petitioner with bilateral cubital tunnel syndrome. (PX 4, p. 7). Petitioner received conservative care initially. (PX 4, pp. 9-10). Dr. Sobeski prescribed Heelbo pads, a type of elbow pad/brace, but they had not worked for Petitioner. (PX 4, p. 9). At the time of the December 23, 2011 appointment, Dr. Sobeski discussed surgery due to the lack of improvement in pain symptoms since the August 15, 2011 date of alleged accident. (PX 4, p. 10).

On January 10, 2012, Petitioner proceeded with surgery, a left side cubital tunnel release, performed by Dr. Sobeski. (PX 4, pp. 11-12). Following surgery, Petitioner followed up with Dr. Sobeski's physician's assistant (PA), James Birkes, on January 26, 2012. At that time she was doing well, her wound was healed, and sutures were removed. However, she still had numbness and tingling in the ulnar nerve distribution. (PX 4, pp. 13-14).

Dr. Sobeski testified that Petitioner's symptoms did not really change following surgery. (PX 4, p. 14). He explained that approximately 15% of people never get better after surgery, and Petitioner could be in that group. (PX 4, p. 15). Based upon Petitioner's surgical result on her left side, Dr. Sobeski decided it would not be worth pursuing surgery on the right side as originally planned. (PX 4, pp. 19-20). Petitioner last received care from Dr. Sobeski on December 3, 2012. (PX 4, p. 23). At that time, restrictions were placed upon Petitioner on a permanent basis. (PX 4, pp. 20-24). Petitioner's permanent lift restrictions are one pound on the left and five pounds on the right. (PX 4, p. 32). A functional capacity evaluation (FCE) was recommended (PX 4, p. 31), but not authorized by Respondent as of the date of hearing.

Petitioner testified that she has returned to working for Respondent within her restrictions. She testified that the restrictions are being accommodated. The only portion of temporary total disability (TTD) claimed by Petitioner involves the period of January 7, 2013 to February 11, 2013, when Petitioner testified she was laid off due to a lack of work available within her restrictions.

On June 6, 2012, Petitioner was sent for an examination pursuant to Section 12 of the Illinois Workers' Compensation Act, 820 ILCS 305/1 *et seq.* (hereafter the "Act") with Dr. Michael Cohen. Dr. Cohen opined Petitioner's injuries were not causally related to her job duties with Respondent. He was aware that the left elbow cubital tunnel release was approved under workers' compensation, but disagreed that there was a causal relationship. (RX 2, Dep. Exh. 2). He testified that he did not believe Petitioner had any pre-existing condition with respect to cubital tunnel syndrome. (RX 2, p. 52).

Dr. Cohen testified that he was unaware of another IME prior to the time of his deposition. (RX 2, p. 54). At hearing, Petitioner testified that she brought the prior IME report to her appointment with Dr. Cohen, offering the report to the doctor, but he refused to review it. During his deposition, Dr. Cohen testified that he would potentially be interested in knowing the findings and opinions of another IME doctor. (RX 2, pp. 54-55). However, he never reviewed the report even when presented with the opportunity. He conceded that among a group of doctors differences of opinion are entirely reasonable. (RX 2, p. 55).

Dr. Cohen testified that he did not know what types of forces were involved with decaling. He did not care what force weights were involved and claimed they would have no bearing on his opinion. (RX 2, p. 57). He testified that he was very knowledgeable with respect to decaling, but conceded he knew of only one or two

people he had ever encountered in the field. (RX 2, p. 53). He relied upon a video showing another individual applying decals while working for Respondent. He watched the video outside the presence of Petitioner and never asked her whether it accurately reflected her job duties and her technique. (RX 2, pp. 53-54). Based upon the technique exhibited by the individual on the video, Dr. Cohen determined that the angle of position of the elbow would not cause cubital tunnel syndrome. (RX 2, p. 58). This opinion was based upon the technique shown in the video. Petitioner testified to the specific technique she utilized at the time of the hearing.

### CONCLUSIONS OF LAW

**Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?**

Petitioner worked for Respondent in a full duty capacity with no work restrictions for ten years prior to the date of injury, August 15, 2011. The job duties performed by Petitioner as a full time decaler with Respondent, and lack of any significant medical care to her arms, indicate that she was asymptomatic and without pain.

Neither Dr. Sobeski, nor Dr. Cohen testified that Petitioner had any pre-existing condition with respect to her arms. On the issue of causation, Dr. Cohen relied upon a video showing another individual performing decal duties. Petitioner testified specifically how she performed decaling. The treating doctor, Dr. Sobeski, testified that he was familiar with Petitioner's job duties with Respondent and believed that her injuries were causally related, or at least aggravated by those duties. The Arbitrator finds that Petitioner was a very credible witness at trial. She openly testified in a forthcoming manner, including during her cross-examination testimony. She appeared to be endeavoring to tell the full truth during her entire testimony.

Based on the foregoing, the Arbitrator finds that Petitioner sustained an accident that arose out of and in the course of her employment by Respondent.

**Issue (D): What was the date of accident?; and**

**Issue (E): Was timely notice of the accident given to Respondent?**

Petitioner testified that she had experienced some pain in her arms a few weeks before the pain increased to the point that she knew she was injured. Once Petitioner became determined to seek medical care, she notified her supervisor, Joel Rocha, on August 15, 2011, that she thought she was injured. She was sent for medical care for the first time on August 15, 2011, and first diagnosed with cubital tunnel syndrome on September 22, 2011.

Petitioner did not delay in giving notice to the employer. She worked through her pain at first, and then reported the injury as soon as she could no longer tolerate it. She did not learn of the specifics of her injuries until after seeking medical care. Based upon Petitioner's testimony and the medical records, the Arbitrator finds the date of accident was August 15, 2011, and further that proper notice was given under the Act.

**Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?**

Petitioner sustained work-related repetitive trauma injuries to her arms bilaterally. From the date of accident, August 15, 2011, and throughout the course of her medical treatment, Petitioner's pain complaints remained consistent.

Petitioner was diagnosed with cubital tunnel syndrome to both her left and right side following the EMG study. Her diagnoses remained the same since that time. The treating surgeon, Dr. Sobeski, testified that a causal relationship exists between Petitioner's job duties, her injuries, her need for surgery, and her ongoing pain complaints. He testified that the work restrictions, which have been in place for well over a year, are permanent in nature. The Arbitrator finds the opinions of treating physician Dr. Sobeski more persuasive than the opinions of Respondent's examining physician, Dr. Cohen.

The Arbitrator finds that Petitioner has proven that there is a causal relationship between the repetitive trauma injuries of August 15, 2011, and Petitioner's current condition (bilateral cubital tunnel syndrome) is causally related to the work injuries.

**Issue (K): Is Petitioner entitled to any prospective medical care?**

Both Dr. Sobeski and Respondent's second examining physician, Dr. Cohen, testified that given the restrictions placed upon Petitioner, a FCE is recommended to formalize the restrictions and determine whether they match Petitioner's job with Respondent. Given the Arbitrator's findings on the issues of accident and causal connection, Respondent is ordered to authorize and pay for the recommended FCE.

**Issue (L): What temporary benefits are in dispute?**

Petitioner returned to work for Respondent within her restrictions. However, from January 7, 2013 to February 11, 2013, Petitioner was laid off due to a lack of work available within her restrictions. Petitioner was unable to work during this period due to her restrictions.

Given the Arbitrator's findings on the issues of accident and causal connection, Respondent is ordered to pay Petitioner TTD benefits from January 7, 2013 to February 11, 2013, at a rate of \$543.16 per week, for five weeks.

**Issue (M): Should penalties or fees be imposed upon Respondent?**

The Arbitrator finds that Respondent's actions in the defense of the present claim are not unreasonable or vexatious. Accordingly, penalties and fees are not imposed upon Respondent.

**Issue (O): 1. Is Dr. Greatting's report admissible?; and 2. Is Petitioner's claim barred by the statute of limitations?*****1. Is Dr. Greatting's report admissible?***

At trial, Respondent objected to the admission of Dr. Greatting's IME report. Petitioner's Exhibit 6 is hereby stricken. However, Dr. Sobeski testified that he had reviewed and relied upon the IME report in the

ordinary course of rendering medical care. His testimony regarding the IME report and his utilizing the information contained in the report are relevant and admissible. Dr. Sobeski's testimony established that he used the report in the course of rendering medical care to Petitioner.

***2. Is Petitioner's claim barred by the statute of limitations?***

Medical records offered into evidence by Respondent dated August 17, 2011 indicate that Petitioner reported that she "has had problems for many years" but that she "felt that if she reported any injury she would be treated unfairly." (RX 1). However, Petitioner credibly testified that her pain got progressively worse to the point where she necessitated medical attention in August 2011. She did not receive a formal diagnosis of her condition until September 2011. Based on the principles set forth in *Durand v. Industrial Comm'n*, 224 Ill.2d 53, 862 N.E.2d 918 (2006), Petitioner should not be punished for diligently working through pain to the point where she necessitated medical treatment. Accordingly, the Arbitrator finds that Petitioner's claim is not barred by the statute of limitations.



STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF MADISON )

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Tyson Kilgore,

Petitioner,

vs.

NO: 13 WC 1748

Rick Feeney Homes, Inc.,

14IWCC0103

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, benefit rates, causal connection, medical expenses, temporary total disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 24, 2013, is hereby affirmed and adopted.

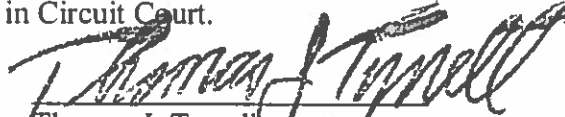
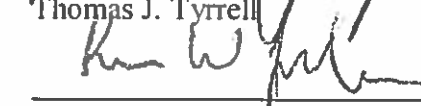

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 11 2014

TJT:yl  
o 1/28/14  
51

  
Thomas J. Tyrrell  
  
Kevin W. Lamborn  
  
Daniel R. Donohoo

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF 19(b) DECISION OF ARBITRATOR

**KILGORE, TYSON**

Employee/Petitioner

Case# **13WC001748**

**RICK FEENEY HOMES**

Employer/Respondent

**14IWCC0103**

On 4/24/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

2575 KANOSKI BRESNEY  
LARRY APFELBAUM  
237 E FRONT ST  
BLOOMINGTON, IL 61701

0532 HOLECEK & ASSOCIATES  
KENNETH SMITH  
161 N CLARK ST SUITE 800  
CHICAGO, IL 60601



STATE OF ILLINOIS )  
 )SS.  
 COUNTY OF MCLEAN )

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/>            | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/>            | Rate Adjustment Fund (§8(g))          |
| <input type="checkbox"/>            | Second Injury Fund (§8(e)18)          |
| <input checked="" type="checkbox"/> | None of the above                     |

**ILLINOIS WORKERS' COMPENSATION COMMISSION**  
**ARBITRATION DECISION**  
 19(b)

**TYSON KILGORE**,  
 Employee/Petitioner

Case # 13 WC 01748

v.

Consolidated cases: NONE

**RICK FEENEY HOMES**,  
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joann M. Fratianni**, Arbitrator of the Commission, in the city of **Peoria**, on **February 28, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

**DISPUTED ISSUES**

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☒ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☒ What temporary benefits are in dispute?  
☐ TPD      ☐ Maintenance      ☒ TTD
- M. ☒ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other: \_\_\_\_\_

**FINDINGS**

On the date of alleged accident, **December 31, 2012**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

Timely notice of this alleged accident *was* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the alleged accident.

In the year preceding the alleged injury, Petitioner earned \$518.50; the average weekly wage was \$367.85.

On the date of the alleged accident, Petitioner was 32 years of age, *married* with three dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has not* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$ 0.00 for TTD, \$ 0.00 for TPD, \$ 0.00 for maintenance, and \$ 0.00 for other benefits, for a total credit of \$ 0.00.

Respondent is entitled to a credit of \$ 0.00 under Section 8(j) of the Act for medical benefits.

**ORDER**

The Arbitrator finds that Petitioner failed to prove that he sustained an accidental injury that arose out of and in the course of his employment by Respondent on **December 31, 2012**.

The Arbitrator further finds that the condition of ill-being complained of is not causally related to the alleged accidental injury of **December 31, 2012**.

All claims for compensation made by Petitioner in this matter are thus hereby denied.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
Signature of Arbitrator JOANN M. FRATIANNI

**April 17, 2013**  
Date

*C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?*

*F. Is the Petitioner's present condition of ill-being causally related to the injury?*

Petitioner testified that he worked for Respondent as a carpenter. He was hired to work for Respondent on December 17, 2012. Respondent is in the business of building homes.

Petitioner testified that on December 31, 2012, he was erecting exterior walls on the second floor of a house that was under construction. Working with him that day were Mr. Tyler Cagle and Mr. Joseph Crawford, his supervisor. Petitioner testified the walls were 8 feet high and 11 feet wide. Petitioner testified he was moving the wall with Mr. Cagle and Mr. Crawford by anchoring it with his right shoulder. In order to do this, he placed his neck and right shoulder through a hole in the wall that had been cut out for a window. While they were moving this wall 6-8 feet from the area on the second floor where it was built, the wall slipped, causing Mr. Cagle and Mr. Crawford to stop supporting it. When this occurred the weight of the wall pressed against Petitioner's neck and right shoulder, causing him to scream in pain. Petitioner testified that it then took Mr. Cagle and Mr. Crawford between 20-45 seconds to get the wall off of him.

Following this, Petitioner testified that Mr. Crawford asked him if he was injured. Petitioner testified that he went home soon after the incident, and on cross-examination he testified he went to another job site that day where he and Mr. Crawford installed a window. Petitioner testified that he could not recall how heavy that window was. Petitioner testified that he was in pain immediately after the wall incident, but did not seek treatment until January 2, 2013.

Petitioner testified that he first sought treatment at OSF PromptCare on January 2, 2013. Petitioner at that time complained of right shoulder pain and indicated that the injury was work related. Petitioner following examination was referred the Advocate Medical Group Occupational Health clinic for further care (Px1)

Petitioner then visited the Advocate Medical Group Occupational Health clinic on January 7, 2013, where a history was recorded of drywall falling on his back and striking his neck area and right shoulder. Petitioner testified that this history was inaccurate. (Px2)

Petitioner also sought treatment at Advocate Medical Group on January 9, 2013. A history was recorded at that time of right shoulder pain that he related to trying to move a wall and it slid and fell onto his right shoulder. Petitioner returned to Advocate Medical Group on January 24, 2013 and a history was recorded of right shoulder pain related to a recent accident at work when dropped heavy stuff and slid on his back, right shoulder.

Petitioner testified these histories were inaccurate and he did not give any medical providers a history of a wall falling and hitting him. The Application for Adjustment of Claim filed in this matter also indicates an injury caused by a wall falling on him.

Mr. Joseph Crawford testified that he, Petitioner and Mr. Tyler Cagle built and erected exterior walls at a new home on December 31, 2012. Mr. Crawford testified that in framing walls on the second floor of a house they attempt to build the wall as close to the edge of the framed house where the wall would be erected. This is done because these walls weigh around 600 pounds.

Mr. Crawford testified that they did not have to move the walls they erected on December 31, 2012, and that they were built in such a manner that they just needed to be stood up once built. Mr. Crawford further testified that the walls they erected on that date did not have any windows or holes cut out of them, nor did they move any wall 6-8 feet. Mr. Crawford testified that no wall slipped on that date nor did any wall slip causing Petitioner to only support it. Mr. Crawford testified that at no time on that date did Petitioner yell or scream in pain and that he did not report an injury on that date.

Mr. Crawford further testified that after the walls were erected, Petitioner and he went to another job site to install a window on the second floor of another building. Mr. Crawford testified this window weighed approximately 150 pounds. Mr. Crawford testified that he and Petitioner carried this window to the second floor. He did not observe any signs of injury to Petitioner and they both completed a full work shift of eight hours.

Mr. Crawford further testified that on January 2, 2013, Petitioner advised him he injured himself on December 31, 2012. Mr. Crawford testified that he advised Petitioner to seek medical attention if he was injured.

Mr. Tyler Cagle testified that he was on the job site on December 31, 2012 along with Petitioner and Mr. Crawford. At that time they were building and erecting exterior walls at a new home. Mr. Cagle's testimony corroborated the testimony of Mr. Crawford as to the work performed at the site and how the walls were built and erected. Mr. Cagle testified that no holes were cut in any of those walls so constructed and no wall moved or slipped on ice or fell. Mr. Cagle testified that he never heard Petitioner scream or yell in pain and at no time did Petitioner support a wall by himself. Mr. Cagle testified that he did not learn of any work injury to Petitioner until days later.

Mr. Rick Feeney testified that he is the owner of Respondent. Mr. Feeney testified that he was not present on the job site on December 31, 2012. Mr. Feeney testified that the walls being constructed at that time were 8 feet tall and 16 feet wide. Second floor walls are built on the second floor almost on top of where they are to be erected, so that the walls will match the width of the first floor walls already in place. Mr. Feeney testified there is no procedure where a wall is constructed and moved 6-8 feet to a location where it is to be erected under these circumstances.

Petitioner testified on rebuttal that the wall slid about 10-16 inches. Petitioner testified he believed the wall slid this distance due to ice and because Mr. Crawford and Mr. Cagle had stopped supporting it when it slid. Petitioner testified that the walls could not be constructed next to the edge where they were to be erected because other structures had been erected on the second floor.

Based upon the above, the Arbitrator finds that Petitioner failed to prove that he sustained an accidental injury that arose out of and in the course of his employment with Respondent on December 31, 2012. The testimony of Mr. Crawford and Mr. Cagle are consistent over what occurred on that date, and severely contradict Petitioner's version of events. Even if one were to believe that a wall was moved 6-8 feet or 10-16 inches, the testimony of the lack of a window cut out was not explained or contradicted, nor the testimony that no injury was reported, nor any shouts or screams of pain occurred on that date. Petitioner did continue working a full shift and performed heavy work at another location before the end of his shift.

Based further upon said findings, the Arbitrator further finds that Petitioner failed to prove that the condition of ill-being alleged was caused by an injury at work for Respondent.

14IWCC0103

***G. What were Petitioner's earnings?***

Petitioner testified he was hired to work at \$13.00 per hour. Respondent's payroll records in evidence (Rx3) reflect total earnings of \$786.50. Mr. Feeney testified that this included wages of \$208.00 for two days he paid Petitioner after he was unable to work, or payments made for the days of January 2, and January 3, 2013. Petitioner was terminated on January 4, 2013.

Based upon the above, the Arbitrator finds the average weekly wage to be \$367.85 based on a total earnings of \$578.50 over a period of 11 days prior to this alleged accident.

***J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?***

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, all claims made by Petitioner for medical expenses in this matter are hereby denied.

***K. Is Petitioner entitled to any prospective medical care?***

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, the Arbitrator further finds that all claims made by Petitioner for certain prospective medical care and treatment for this alleged injury are hereby denied.

***L. What temporary benefits are in dispute?***

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, the Arbitrator further finds that all claims made by Petitioner for temporary total disability benefits for this alleged injury are hereby denied.

***M. Should penalties or fees be imposed upon Respondent?***

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, the Arbitrator further finds that all claims made by Petitioner for penalties and attorneys fees for this alleged injury are hereby denied.



STATE OF ILLINOIS )

) SS.

COUNTY OF )  
SANGAMON

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

## BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Syliva Sil,

Petitioner,

vs.

NO: 11 WC 39574

State of Illinois Department of  
Commerce & Economic Opportunity,

14IWCC0104

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 14, 2013, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

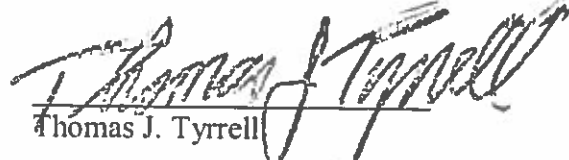
DATED:

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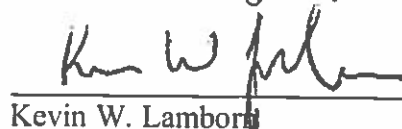
o 1/28/14

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FEB 11 2014



Thomas J. Tyrrell



Kevin W. Lamborn



Daniel R. Donohoo

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

SIL, SYLVIA

Employee/Petitioner

Case# 11WC039574

SOI-DEPT OF COMMERCE & ECONOMIC  
OPPORTUNITY

Employer/Respondent

14IWCC0104

On 3/14/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.11% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1157 DELANO LAW OFFICES LLC  
CHARLES H DELANO IV  
1 S E OLD STATE CAPITAL PLZ  
SPRINGFIELD, IL 62701

0499 DEPT OF CENTRAL MGMT SERVICES  
MGR WORKMENS COMP RISK MGMT  
801 S SEVENTH ST  
8 MAIN  
SPRINGFIELD, IL 62794-9208

4993 ASSISTANT ATTORNEY GENERAL  
ANDREW SUTHARD  
500 S 2ND ST  
SPRINGFIELD, IL 62706

0498 STATE OF ILLINOIS  
ATTORNEY GENERAL  
100 W RANDOLPH ST  
13TH FLOOR  
CHICAGO, IL 60601-3227

0502 ST EMPLOYMENT RETIREMENT SYSTEMS  
2101 S VETERANS PARKWAY\*  
PO BOX 19255  
SPRINGFIELD, IL 62794-9255

CERTIFIED as a true and correct copy  
pursuant to 820 ILCS 305/14

MAR 14 2013



*[Signature]*  
KIMBERLY B. JANAS Secretary  
Illinois Workers' Compensation Commission



STATE OF ILLINOIS )

)

COUNTY OF Sangamon )

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/>            | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/>            | Rate Adjustment Fund (§8(g))          |
| <input type="checkbox"/>            | Second Injury Fund (§8(e)(18))        |
| <input checked="" type="checkbox"/> | None of the above                     |

**ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION**

**Sylvia Sil**  
Employee/Petitioner

Case # 11 WC 039574

v.

**Springfield**

**State of Illinois – Department of  
Commerce and Economic Opportunity**  
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Douglas McCarthy**, arbitrator of the Commission, in the city of **Springfield**, on **February 8, 2013**. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

**DISPUTED ISSUES**

- A. ☐ Was the respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of the petitioner's employment by the respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to the respondent?
- F. ☒ Is the petitioner's present condition of ill-being causally related to the injury?
- G. ☐ What were the petitioner's earnings?
- H. ☐ What was the petitioner's age at the time of the accident?
- I. ☐ What was the petitioner's marital status at the time of the accident?
- J. ☐ Were the medical services that were provided to petitioner reasonable and necessary?
- K. ☐ What amount of compensation is due for temporary total disability?
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon the respondent?
- N. ☐ Is the respondent due any credit?
- O. ☐ Other \_\_\_\_\_

## FINDINGS

- On May 5, 2010, the respondent State of Illinois was operating under and subject to the provisions of the Act.
- On this date, an employee-employer relationship *did* exist between the petitioner and respondent.
- On this date, the petitioner *did* sustain injuries that arose out of and in the course of employment.
- Timely notice of this accident *was* given to the respondent.
- In the year preceding the injury, the petitioner earned \$ 91,764.00; the average weekly wage was \$ 1,746.69.
- At the time of injury, the petitioner was 64 years of age, *single* with 0 children under 18.
- Necessary medical services *have* been provided by the respondent.
- To date, \$ N/A has been paid by the respondent for TTD and/or maintenance benefits. All payable TTD benefits have been paid by the Respondent.

## ORDER

- The respondent shall pay the petitioner temporary total disability benefits of \$ N/A/week for N/A weeks, from N/A through N/A, which is the period of temporary total disability for which compensation is payable.
- The respondent shall pay the petitioner the sum of \$ 664.72/week for a further period of 35.875 weeks, as provided in Section 8(e) of the Act, because the injuries sustained caused !5% loss of use of the right hand, and 2.5 % loss of use of the left hand.
- The respondent shall pay the petitioner compensation that has accrued from May 5, 2010 through February 8, 2013, and shall pay the remainder of the award, if any, in weekly payments.
- The respondent shall pay the further sum of \$ N/A for necessary medical services, as provided in Section 8(a) of the Act.
- The respondent shall pay \$ N/A in penalties, as provided in Section 19(k) of the Act.
- The respondent shall pay \$ N/A in penalties, as provided in Section 19(l) of the Act.
- The respondent shall pay \$ N/A in attorneys' fees, as provided in Section 16 of the Act.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

D. D. [Signature]  
Signature of arbitrator

March 12, 2013  
Date

MAR 14 2013

**In support of the Arbitrator's decision relating to (C) and (F), the Arbitrator finds the following facts:**

This is a repetitive trauma claim. The Petitioner, Sylvia Sil, testified that she worked for the State of Illinois for over 20 years. For the last eleven (11) years, Petitioner was employed as an Information Systems Analyst. Petitioner testified that she worked 5 days per week and 7.5 hours per day. Petitioner testified that in order to perform her job she was required to type. Petitioner testified that she typed and did a lot of mouse work for approximately 5 hours of each day she worked.

Petitioner testified that she typed with her forearms resting on the desk and her hands tilted down. She testified that she used the mouse with her hand position in the same manner as when she typed. She further said that the Respondent had provided her with a gel pad to use while typing. She said that she tried the gel pad and it did not work for her so she did not use it.

Petitioner testified that in May of 2010, she was experiencing a problem with her hands. She would wake up in the middle of the night with abnormal sensations and have to shake her hands out. She testified that she also had to do this during the day at work because of the numbness she experienced in her hands. She is right handed, and testified that her right hand were worse than her left. Petitioner testified that she contacted her family physician, Dr. Saunders. Dr. Saunders referred her to Dr. Trudeau. Petitioner saw Dr. Trudeau on May 5, 2010.

Dr. Trudeau's records are included in the record as Petitioner's Exhibit 3. Dr. Trudeau performed an EMG and nerve conduction tests on Petitioner. The results of the EMG documented bilateral carpal tunnel syndrome. The right side was characterized as moderately severe. The left side was characterized as mild and neurapractic. She complained of paresthesias in both hands.

Petitioner then saw Dr. Christopher Maender. Dr. Maender is with the Orthopaedic Center in Springfield. Dr. Maender's records are included in the record as Petitioner's Exhibit 4. Again, she complained of symptoms predominantly in the right hand. Dr. Maender prescribed a splint for Petitioner to wear. When the splint did not relieve the symptoms, Petitioner returned to her family physician, Dr. Saunders. Dr. Saunders referred her to Dr. Mark Greatting at the Springfield Clinic.

Dr. Greatting's records are included in the record as Petitioner's Exhibit 5. Petitioner remained under Dr. Greatting's care from December 9, 2010 through January 30, 2012. Dr. Greatting performed carpal tunnel surgery on Petitioner's right hand on November 15, 2011. Petitioner was off work from November 15, 2011 through December 26, 2011. She received her temporary total disability from the State.

## **1. THE MEDICAL EVIDENCE**

First, with regard to the medical evidence, Dr. Mark Greatting's records are included in the record as Petitioner's Exhibit 5. Dr. Greatting's note of December 9, 2010 states in pertinent part "... patient has chronic right carpal tunnel syndrome. I do think based on her history, her work activities have contributed to or aggravated the symptoms or problems with her carpal tunnel syndrome on the right hand." Dr. James Williams, Respondent's examining physician was deposed on two occasions. His depositions are included in the record as Respondent's Exhibits 4 and 8. Dr. Williams stated as follows:

"... Richard Gelberman, probably one of the most famous people who have done the study, did a study on that when he was at the Mass General, the chief of hand – now he's the chief of orthopedic surgery at Washington University in St. Louis. Showed that by flexing the wrist even 30 degrees, you'll either triple or even quadruple the pressure within the carpal canal."  
(Respondent's Exhibit 4, Pages 18 & 19)."

Dr. Williams was asked the following questions:

**Q: Assuming Ms. Sil typed with her wrists in a flexed position, could that cause or aggravate the carpal tunnel which you diagnosed her with when you saw her on March 16 of last year?**

**A: Mattering – obviously I don't have evidence of that, but mattering how much they were flexed or for how long a period of time, yes, that would be an aggravating factor?**

**Q: Such that it could lead to the need for surgery?**

**A: Possibly could.**

(Respondent's Exhibit 4, Page 19, Lines 2 through 12.)

Dr. Williams supplemental Independent Medical Examination report is included in the record as Respondent's Exhibit 7. In it, Dr. Williams states that it is obvious that the flexed posture of the wrist for a long period of time could be an aggravating factor in the development of carpal tunnel syndrome. Dr. Williams again testified as follows:

**Q: It's, also, true with that pressure within the carpal canal of the employee typing is dependent on the position of the wrist when typing, correct?**

**A: Without a question, Chip. That's what I stated earlier. Correct.**

**Q: And a person typing with flexed wrists will increase the pressure within the carpal tunnel, correct?**

**A: That is what the studies have shown, Chip. That's correct.**

(Respondent's Exhibit 8, Page 18 & 19).

## 2. LAY TESTIMONY

This is not a typical case. As indicated, the Petitioner's treating physician and the Respondent's examining physician do not have any real disagreement regarding the cause of carpal tunnel symptoms when typing. The issue in this case is whether or not the Petitioner was credible when describing her job duties. Three witnesses testified regarding Petitioner's job duties. They were Petitioner, a co-worker, Kevin Parks, and Petitioner's former supervisor, Lisa Logan. For the following reasons, the Arbitrator accepts Petitioner's testimony regarding her job duties over that of Mr. Parks and Ms. Logan.

### A. KEVIN PARKS' TESTIMONY

Mr. Parks testified that he was a co-worker of Petitioner. He was also shown in a video purporting to demonstrate the job done by Petitioner as shown in Respondent's Exhibit 6. Mr. Parks testified that his job involved very little typing. Mr. Parks testified that Petitioner did not hold her hand in a flexed manner when she typed. He based this upon observations he said he made by walking by Petitioner's cubicle. He further testified that when he observed the Petitioner typing, her wrists were held slightly in an extended position.

Mr. Parks testified that he had a different cubicle from Petitioner. Other than getting up to get coffee or go to the restroom, he sits at his desk throughout the day. He testified that his work day is 7.5 hours. 7 hours of each day is spent sitting at his desk. Mr. Parks testified that he remembered walking around and watching how Petitioner held her hands when she typed.

Mr. Parks was unable to remember the names of any of the contractors who worked in his office. He testified that there were 20 State employees in his office. He could not remember the names of even half of these State workers in his office. Mr. Parks testified that he could remember how several of his co-workers held their hands when they type. He was asked whether he made it a specific habit when walking by people's desks to look at them typing and remember how they held their hands. He testified that he would not say it was a habit because that would be kind of weird. He admitted that walking by someone's desk would take no more than 2 to 3 seconds.

Mr. Parks testified that he had significant interaction with Petitioner on a daily basis. When asked what he considered to be significant interaction, he stated that he would walk by her and say hello. He did not work on the same projects with Petitioner. When asked whether walking by Petitioner's desk and saying hello was a lot of interaction to him, Mr. Parks stated "I guess in your opinion probably not." Mr. Parks also stated that he was not watching Petitioner when she was at her desk. He testified "no, we would not sit together or anything." He admitted that he would have no idea what Petitioner was doing 7 of the 7.5 hours each day she was at work.

Mr. Parks was asked whether he found Petitioner to be an honest person and he said that Petitioner had never lied to him. He testified that if Petitioner said she spent 5 hours of her day typing, he would not have any reason to disagree with that.

As indicated above, Dr. Williams is the physician who the State selected to examine Petitioner. Prior to his second deposition, Dr. Williams was given the DVD of Mr. Parks allegedly performing his job. During that deposition, Dr. Williams was asked the following question and gave the following answer:

**Q:** It seems to me that this person, Mr. Parks, who was the employee on the DVD, was not doing very much of anything. Would you think that that's normal for a person in that position to be doing that little?

**A:** That's – I'll be honest, Chip. That's what I wondered. And I don't know, Chip. I don't know.

(Respondent's Exhibit 8, Pages 21).

Mr. Parks concluded his testimony by saying that if Petitioner testified that she types 5 hours a day in her job he had no reason to disagree with that.

#### LISA LOGAN'S TESTIMONY

Ms. Logan testified that she was Petitioner supervisor for approximately 3.5 years. She testified that Petitioner essentially did no work in her position. Ms. Logan testified that she arrived at this conclusion based on Petitioner's lack of production.

Ms. Logan testified that she was asked by the State to walk by Ms. Sil's cubicle and observe her. She testified that she was not sure when she observed the Petitioner typing, but estimated that it was from the middle of 2012 to the end of the year. Ms. Logan testified that Petitioner did not type with her hands in a flexed position, but that her wrists were actually bent up in a position of flexion, similar to the testimony of Mr. Parks.

The Arbitrator discounts Ms. Logan's testimony concerning the petitioner's lack of production for several reasons. Ms. Logan testified that she filled out employee evaluations of Petitioner during the years she supervised her. Ms. Logan gave Petitioner good evaluations for each of the years she supervised her. Ms. Logan testified that she knew she was not being truthful in Petitioner's evaluation when she authored it, suggesting that if she truthfully completed the job evaluations it would trigger grievances which she indicated that she did not have time to deal with. However, she completed a job description of Ms. Sil's job on November 21, 2010, when she first learned of the claim. She said on that description that the Petitioner's job involved typing six to eight hours per day. (RX 11) The description was obviously prepared in connection with the Respondent's initial investigation into the claim. If Ms. Sil was doing very little to nothing on the job, then certainly her supervisor, when asked to complete a job description, would have indicated as such.

#### C. DR. JAMES WILLIAMS CREDIBILITY

In connection with Petitioner's Section 12 evaluation, the Respondent provided documents to Dr. James Williams. He was provided the above referenced job description prepared by Ms. Logan. On page 2 of his report, Dr. Williams notes that he went over the job description with the Petitioner, and that she agreed with it. Dr. Williams also reviewed the ergonomic study performed by Corvel on May 9, 2012, which said that typing, point and click data entry was done on a

frequent basis, characterized as 2.5 to 5.5 hours a day. (RX 6) Despite having that information, he relied on the video, which he acknowledged was not the Petitioner doing her job and appeared to possibly not represent a normal work pace, to say that her typing was intermittent and did not cause or aggravate her condition.

Dr. Williams stated in his first deposition that he was of the school of thought that keyboarding, regardless of the duration, was not a risk factor for carpal tunnel. It really should not have mattered to him whether the Petitioner's keyboarding was intermittent. The crux of his opinion testimony dealt with wrist position. Again, relying on the video which showed her co-worker typing with his hands in a neutral position, the doctor testified to no causation. (RX 8 at 11,12) Not only does that assumption conflict with the Petitioner's testimony that her wrists were flexed with her elbows resting on the edge of her desk, it conflicts with the testimony of both of the Respondent's witnesses who said they observed the Petitioner typing with her wrists in an extended position. As stated above, Dr. Williams agreed that typing with flexed wrists could be causative. He also said at both depositions that holding the wrists in a flexed position would create an even greater risk. (RX 4 at 19; RX 8 at 19)

In other words, Dr. Williams' testimony supports the Petitioner's claim that her work caused or aggravated the condition regardless of whether the Arbitrator believes the Petitioner or Respondent concerning wrist position. The Arbitrator does not believe the Petitioner, without the use of a gel pad, typed with her wrists in a neutral position. The Arbitrator also does not believe the Petitioner did nothing at work. Her testimony that she typed an average of five hours a day is consistent with the job description performed by the Respondent and the Corvel study, both of which were prepared in connection with this claim.

Based upon the foregoing, the Arbitrator finds that Petitioner did sustain an accident which arose out of and in the course of her employment and that her condition of ill-being is causally related to said work related injury.

**In support of the Arbitrator's decision relating to (L), the Arbitrator finds the following facts:**

In Arbitrator repeats the findings set forth above in support of (C) and (F) as if set forth fully herein:

Petitioner testified that her hands are weak. She is unable to open jars or water bottles. She is unable to turn door knobs. When lifting a gallon of milk, Petitioner must use both hands.

Petitioner still gets numbness in her hands but that condition has improved since her surgery. However, when holding objects and twisting her hand, Petitioner notices a definite lack of strength.

Petitioner has received no treatment for her left hand. Her various treating doctors described the left hand condition as being very mild. Dr. Williams reported that she had no left hand symptoms when he performed his exam.

The Arbitrator finds Petitioner has sustained a loss of use of 15% of her right hand and 2.5% loss of use of her left hand as a result of this injury.

STATE OF ILLINOIS        )  
                                       ) SS.  
 COUNTY OF PEORIA        )

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Laura Guyon,

Petitioner,

vs.

NO: 11WC39290

Heyl Royster Voelker,

Respondent.

141WCC0105

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the 19(b) herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, temporary total disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 6, 2013, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$35,000.00. The party commencing the proceedings for review in the Circuit Court shall

file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 11 2014

o-01/29/14

RWW/lj

46



Ruth W. White



Michael J. Brennan



Charles J. DeVriendt



ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF 19(b) DECISION OF ARBITRATOR

GUYON, LAURA

Employee/Petitioner

Case# 11WC019304

11WC039290

HEYL ROYSTER VOELKER & ALLEN

Employer/Respondent

14IWCC0105

On 3/6/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.12% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0225 GOLDFINE & BOWLES PC  
ATTN: WORK COMP DEPT  
124 S W ADAMS ST SUITE 200  
PEORIA, IL 61602

0080 PRUSAK WINNE & MCKINLEY LTD  
JOSEPH E WINNE  
403 N E JEFFERSON ST  
PEORIA, IL 61603

STATE OF ILLINOIS )  
)SS.  
COUNTY OF PEORIA )

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/>            | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/>            | Rate Adjustment Fund (§8(g))          |
| <input type="checkbox"/>            | Second Injury Fund (§8(e)18)          |
| <input checked="" type="checkbox"/> | None of the above                     |

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION  
19(b)

LAURA GUYON,  
Employee/Petitioner

Case # 11 WC 19304

v.  
HEYL, ROYSTER, VOELKER & ALLEN,  
Employer/Respondent

Consolidated cases: 11 WC 39290.

**14IWCC0105**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joann M. Fratianni**, Arbitrator of the Commission, in the city of **Bloomington**, on **October 10, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☐ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☐ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☒ Is Respondent due any credit?
- O. ☐ Other: \_\_\_\_\_

## FINDINGS

On the date of accident, November 16, 2010, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned \$41,600.00; the average weekly wage was \$800.00.

On the date of accident, Petitioner was 41 years of age, *single* with one dependent child.

Petitioner *has in part* received all reasonable and necessary medical services.

Respondent *has in part* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$ 0.00 for TTD, \$ 0.00 for TPD, \$ 0.00 for maintenance, and \$ 0.00 for other benefits, for a total credit of \$ 0.00.

Respondent is entitled to a credit of \$ 0.00 under Section 8(j) of the Act for medical benefits.

## ORDER

The Arbitrator finds that Respondent shall pay to Petitioner the reasonable and necessary medical services that total \$5,664.63, as provided in Section 8(a) and 8.2 of the Act.

The Arbitrator orders Respondent to provide and pay for future medical costs in the form of left elbow surgery as prescribed by Dr. Garst, including all ancillary medical costs concerning same and all periods of temporary total and/or temporary partial disability periods incurred for treatment resulting from these procedures, as this prescription for future care represents reasonable and necessary medical care and treatment that is causally related to this particular accidental injury.

Respondent shall be given full credit for all amounts paid in medical bills incurred as a result of this accidental injury and shall hold Petitioner safe and harmless at all attempts at collection or reimbursement of same.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
Signature of Arbitrator JOANN M. FRATIANNI

February 28, 2013  
Date

*C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?*

*F. Is the Petitioner's present condition of ill-being causally related to the injury?*

Petitioner testified that she works for Respondent as a legal secretary. Since 2005 she has been spending between 80-90% of her time at work typing. She works for a senior partner and an associate attorney. Both of these attorneys perform most of their work through dictation and are involved in federal court practice. Petitioner testified that in federal court practice, all court filings are electronic and she was required to receive each filing and print them out in order to create a hard file. Petitioner testified that she prints out around 50 documents daily on an average.

Petitioner testified that she sits at a corner type workstation and her keyboard is located at desk level in the corner. On her left is a three-drawer printer that is 2-1/2 feet tall and sits on her work station. Petitioner testified that she is 5'3" in height. Petitioner testified that when she prints a document at her workstation, she must reach with her left elbow above her head and pick up the printed document from the tray of the printer. Petitioner testified she quit smoking two years ago and does not currently smoke. She has no evidence or history of diabetes. Petitioner did have a prior Workers' Compensation settlement that was approved on December 17, 2007 by the Commission for repetitive trauma to both hands and arms and was diagnosed with bilateral carpal and capital tunnel syndromes.

Petitioner testified she began experiencing left elbow pain in the fall of 2010. She described the pain as a gradual onset that progressively became worse. She sought treatment for her symptoms with Dr. Jeffrey Garst, an orthopedic surgeon who specialized in hand and upper extremity surgery. Dr. Garst testified by evidence deposition (Px3) that he performs an average of 15-20 surgeries weekly. Petitioner first presented to his office on November 16, 2010 with left elbow pain and pain in her left shoulder. Petitioner testified that Dr. Garst injected her left elbow that turned out to be very painful, but provided her with symptomatic relief for approximately one week until the injection wore off.

Dr. Garst testified that cortisone injections are both diagnostic and therapeutic. If the shot takes the pain away for even a short time, then the correct area was injected and verified the diagnosis. He prescribed a left elbow MRI that was performed on December 27, 2010. This revealed a partial tear at the origin of the common extensor tendon and further revealed a node at the lateral aspect of the left elbow. Petitioner testified the node, which she described as a small mass, had been present on her arm for years and caused her no pain. Dr. Garst testified the node was not the cause of the symptoms. Dr. Garst testified that a tear of the extensor tendon is a common finding with those suffering from lateral upper epicondylitis or tennis elbow, as the tendon would get worn or irritated and it is tearing a bit would cause pain.

Petitioner then saw Dr. Garst on March 15, 2011. On that occasion he diagnosed left shoulder OS acromion and left elbow lateral epicondylitis with extensor origin tear. Dr. Garst testified that left elbow surgery would help as Petitioner had attempted a variety of conservative care to the left elbow with no real improvement. Dr. Garst testified that he would recommend no treatment to the left shoulder at this time but that surgery may also be contemplated there in the future.

Dr. Garst in response to a hypothetical question was of the opinion that the left elbow extensor origin tear and lateral epicondylitis was work related. He also testified that it would be less likely that the left shoulder OS acromion issue would be work related, but was developmental. Dr. Garst testified that normally shoulder injuries are related to heavy lifting or overhead work and he was not sure that she performed such work. Dr. Garst further admitted that it would be a fair statement that Petitioner's left shoulder complaints have nothing to do with her work or typing.

Petitioner next saw Dr. Garst on September 27, 2011 with complaints of right elbow pain and a bit of pain in her shoulder. These symptoms are the subject matter of case no. 11 WC 39290, which was consolidated and heard with this matter.

When asked what his plan was for Petitioner's elbow symptoms, Dr. Garst testified the left side has been going on for a couple of years and the right side has been going on for almost a year and a half, and she has gotten conservative care, and he recommended surgery. He thought surgery is indicated. Dr. Garst testified he would like to perform surgery on the left side, then once that was healed, he would perform surgery on the right.

On February 7, 2012, Petitioner saw Dr. Garst with continuing complaints of pain in both shoulders and elbows. She showed Dr. Garst a photograph (Rx1) of her workstation and asked his opinion as to whether her left shoulder symptoms were relate to her work. The photograph depicts the tall printer to her left side. Petitioner testified that she explained to Dr. Garst that she had to frequently reach with her left hand to the top of the printer to retrieve printed documents. Dr. Garst testified that the OS acromial of the left shoulder is a congenital abnormality, but she has pain with impingement on the left side that he felt was significantly contributed to or caused by her workstation setup. Dr. Garst testified that he felt "frequently" meant at least a few times each hour of reaching. Dr. Garst further felt that if Petitioner did not have to perform that type of work then she probably would not have the symptoms she is experiencing. Dr. Garst felt that type of work did significantly contribute to the left shoulder symptoms or caused them.

Dr. Garst further testified that the extensor carpi radialis brevis to the elbow was affected when someone was engaged in typing. Dr. Garst felt the tendon and muscle were affected, stating that she had to use both in typing because it extends the wrist. If you keep doing that all day, you are having your wrist extended all day and that requires th use of the tendon.

Respondent arranged for Petitioner to be examined by Dr. Mark Miller on April 11, 2011. Dr. Miller testified by evidence deposition (Rx3) that he is an orthopedic surgeon who is a shoulder specialist. Dr. Miller agreed that Petitioner has a diagnosis of tendonopathy with changes to the extensor carpi radialis brevis that is a fairly standard tennis elbow. Dr. Miller was of the opinion that the left elbow condition was not work related as he felt the extensor carpi radialis brevis tendon is not involved during the typing process. When pressed on cross-examination as to his opinion, he responded "I don't have a great answer for you."

Concerning the left shoulder, Dr. Miller felt that Petitioner had a OS acromial which was not caused by work. Dr. Miller felt that when you are typing, you are not using your shoulder, so unless you perform a lot of overhead work he could not attribute the condition to work. Dr. Miller during his testimony was under the impression that Petitioner would reach overhead once every 12 minutes or so during a 50 hour workweek. He did not believe this could be defined as "repetitive" which he considered several times a minute lifting the arm overhead. The work place analysis Dr. Miller relied upon (Rx2) does not mention the location or dimensions of her printer.

Based upon the above, the Arbitrator finds the opinions of Dr. Garst to be more credible than those of Dr. Miller and as such, finds that on November 16, 2010, Petitioner sustained accidental injuries that arose out of and in the course of her employment by Respondent and that manifested itself from repetitive trauma on that date.

Based further upon the above, the Arbitrator finds that the condition of ill-being to the left elbow and left shoulder are causally related to the accidental injury of November 16, 2010.

***J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?***

Petitioner introduced into evidence the following medical charges that were incurred after this accident:

Great Plains Orthopedics (Dr. Garst)	\$ 604.40
Proctor Hospital	\$ 559.72
HCH Administration	\$4,213.45
Out of Pocket medical expenses:	\$ 287.06

These charges total \$5,664.63.

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings the Arbitrator awards the above charges pursuant to the medical fee schedule created by the Act, as those charges represent reasonable and necessary medical care and treatment designed to cure or relieve the condition of ill-being sustained by this accidental injury.

Respondent is entitled to receive a credit as to all amounts paid by them.

***K. Is Petitioner entitled to any prospective medical care?***

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, the Arbitrator further finds that the prescribed surgery to the left elbow by Dr. Garst represents reasonable and necessary medical care and treatment designed to cure or relieve the condition of ill-being caused by this accidental injury, and orders Respondent to authorize and pay for same.

No order shall issue as to the left shoulder in accordance with the opinion of Dr. Garst as to the need for surgery to that portion of the body at this time.

All claims for prospective medical care and treatment to the right elbow and right shoulder shall be addressed by this Arbitrator in the decision issued in case no. 11 WC 39290, which was consolidated and heard with this matter.

***N. Is Respondent due any credit?***

See findings of this Arbitrator in "J" above.

STATE OF ILLINOIS )  
) SS.  
COUNTY OF PEORIA )

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Laura Guyon,  
  
Petitioner,

vs.

NO: 11WC19304

Heyl Royster Voelker,  
  
Respondent.

**14IWCC0106**

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the 19(b) herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, temporary total disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 6, 2013, is hereby affirmed and adopted.

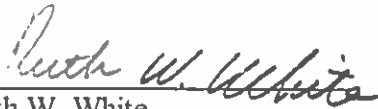
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

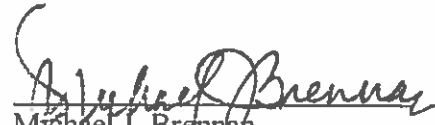
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$35,000.00. The party commencing the proceedings for review in the Circuit Court shall

file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 11 2014  
o-01/29/14  
RWW/lj  
46

  
Ruth W. White

  
Michael J. Brennan

  
Charles J. DeVriendt





ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF 19(b) DECISION OF ARBITRATOR

**GUYON, LAURA**

Employee/Petitioner

Case# **11WC019304**

11WC039290

**HEYL ROYSTER VOELKER & ALLEN**

Employer/Respondent

**141WCC0106**

On 3/6/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.12% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0225 GOLDFINE & BOWLES PC  
ATTN: WORK COMP DEPT  
124 S W ADAMS ST SUITE 200  
PEORIA, IL 61602

0080 PRUSAK WINNE & MCKINLEY LTD  
JOSEPH E WINNE  
403 N E JEFFERSON ST  
PEORIA, IL 61603

STATE OF ILLINOIS )

)SS.

COUNTY OF PEORIA )

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/>            | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/>            | Rate Adjustment Fund (§8(g))          |
| <input type="checkbox"/>            | Second Injury Fund (§8(e)18)          |
| <input checked="" type="checkbox"/> | None of the above                     |

**ILLINOIS WORKERS' COMPENSATION COMMISSION**  
**ARBITRATION DECISION**  
**19(b)**

LAURA GUYON, \_\_\_\_\_,

Employee/Petitioner

Case # 11 WC 19304

v.

Consolidated cases: 11 WC 39290.HEYL, ROYSTER, VOELKER & ALLEN,

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joann M. Fratianni**, Arbitrator of the Commission, in the city of **Bloomington**, on **October 10, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

**DISPUTED ISSUES**

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☐ What temporary benefits are in dispute?  
☐ TPD      ☐ Maintenance      ☐ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☒ Is Respondent due any credit?
- O. ☐ Other: \_\_\_\_\_

## FINDINGS

On the date of accident, November 16, 2010, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned \$41,600.00; the average weekly wage was \$800.00.

On the date of accident, Petitioner was 41 years of age, *single* with one dependent child.

Petitioner *has in part* received all reasonable and necessary medical services.

Respondent *has in part* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$ 0.00 for TTD, \$ 0.00 for TPD, \$ 0.00 for maintenance, and \$ 0.00 for other benefits, for a total credit of \$ 0.00.

Respondent is entitled to a credit of \$ 0.00 under Section 8(j) of the Act for medical benefits.

## ORDER

The Arbitrator finds that Respondent shall pay to Petitioner the reasonable and necessary medical services that total \$5,664.63, as provided in Section 8(a) and 8.2 of the Act.

The Arbitrator orders Respondent to provide and pay for future medical costs in the form of left elbow surgery as prescribed by Dr. Garst, including all ancillary medical costs concerning same and all periods of temporary total and/or temporary partial disability periods incurred for treatment resulting from these procedures, as this prescription for future care represents reasonable and necessary medical care and treatment that is causally related to this particular accidental injury.

Respondent shall be given full credit for all amounts paid in medical bills incurred as a result of this accidental injury and shall hold Petitioner safe and harmless at all attempts at collection or reimbursement of same.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
Signature of Arbitrator JOANN M. FRATIANNI

February 28, 2013  
Date

MAR 6 - 2013

141WCC0106

*C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?*

*F. Is the Petitioner's present condition of ill-being causally related to the injury?*

Petitioner testified that she works for Respondent as a legal secretary. Since 2005 she has been spending between 80-90% of her time at work typing. She works for a senior partner and an associate attorney. Both of these attorneys perform most of their work through dictation and are involved in federal court practice. Petitioner testified that in federal court practice, all court filings are electronic and she was required to receive each filing and print them out in order to create a hard file. Petitioner testified that she prints out around 50 documents daily on an average.

Petitioner testified that she sits at a corner type workstation and her keyboard is located at desk level in the corner. On her left is a three-drawer printer that is 2-1/2 feet tall and sits on her work station. Petitioner testified that she is 5'3" in height. Petitioner testified that when she prints a document at her workstation, she must reach with her left elbow above her head and pick up the printed document from the tray of the printer. Petitioner testified she quit smoking two years ago and does not currently smoke. She has no evidence or history of diabetes. Petitioner did have a prior Workers' Compensation settlement that was approved on December 17, 2007 by the Commission for repetitive trauma to both hands and arms and was diagnosed with bilateral carpal and capital tunnel syndromes.

Petitioner testified she began experiencing left elbow pain in the fall of 2010. She described the pain as a gradual onset that progressively became worse. She sought treatment for her symptoms with Dr. Jeffrey Garst, an orthopedic surgeon who specialized in hand and upper extremity surgery. Dr. Garst testified by evidence deposition (Px3) that he performs an average of 15-20 surgeries weekly. Petitioner first presented to his office on November 16, 2010 with left elbow pain and pain in her left shoulder. Petitioner testified that Dr. Garst injected her left elbow that turned out to be very painful, but provided her with symptomatic relief for approximately one week until the injection wore off.

Dr. Garst testified that cortisone injections are both diagnostic and therapeutic. If the shot takes the pain away for even a short time, then the correct area was injected and verified the diagnosis. He prescribed a left elbow MRI that was performed on December 27, 2010. This revealed a partial tear at the origin of the common extensor tendon and further revealed a node at the lateral aspect of the left elbow. Petitioner testified the node, which she described as a small mass, had been present on her arm for years and caused her no pain. Dr. Garst testified the node was not the cause of the symptoms. Dr. Garst testified that a tear of the extensor tendon is a common finding with those suffering from lateral upper epicondylitis or tennis elbow, as the tendon would get worn or irritated and it is tearing a bit would cause pain.

Petitioner then saw Dr. Garst on March 15, 2011. On that occasion he diagnosed left shoulder OS acromion and left elbow lateral epicondylitis with extensor origin tear. Dr. Garst testified that left elbow surgery would help as Petitioner had attempted a variety of conservative care to the left elbow with no real improvement. Dr. Garst testified that he would recommend no treatment to the left shoulder at this time but that surgery may also be contemplated there in the future.

Dr. Garst in response to a hypothetical question was of the opinion that the left elbow extensor origin tear and lateral epicondylitis was work related. He also testified that it would be less likely that the left shoulder OS acromion issue would be work related, but was developmental. Dr. Garst testified that normally shoulder injuries are related to heavy lifting or overhead work and he was not sure that she performed such work. Dr. Garst further admitted that it would be a fair statement that Petitioner's left shoulder complaints have nothing to do with her work or typing.

14IWC0106

Petitioner next saw Dr. Garst on September 27, 2011 with complaints of right elbow pain and a bit of pain in her shoulder. These symptoms are the subject matter of case no. 11 WC 39290, which was consolidated and heard with this matter.

When asked what his plan was for Petitioner's elbow symptoms, Dr. Garst testified the left side has been going on for a couple of years and the right side has been going on for almost a year and a half, and she has gotten conservative care, and he recommended surgery. He thought surgery is indicated. Dr. Garst testified he would like to perform surgery on the left side, then once that was healed, he would perform surgery on the right.

On February 7, 2012, Petitioner saw Dr. Garst with continuing complaints of pain in both shoulders and elbows. She showed Dr. Garst a photograph (Rx1) of her workstation and asked his opinion as to whether her left shoulder symptoms were relate to her work. The photograph depicts the tall printer to her left side. Petitioner testified that she explained to Dr. Garst that she had to frequently reach with her left hand to the top of the printer to retrieve printed documents. Dr. Garst testified that the OS acromial of the left shoulder is a congenital abnormality, but she has pain with impingement on the left side that he felt was significantly contributed to or caused by her workstation setup. Dr. Garst testified that he felt "frequently" meant at least a few times each hour of reaching. Dr. Garst further felt that if Petitioner did not have to perform that type of work then she probably would not have the symptoms she is experiencing. Dr. Garst felt that type of work did significantly contribute to the left shoulder symptoms or caused them.

Dr. Garst further testified that the extensor carpi radialis brevis to the elbow was affected when someone was engaged in typing. Dr. Garst felt the tendon and muscle were affected, stating that she had to use both in typing because it extends the wrist. If you keep doing that all day, you are having your wrist extended all day and that requires th use of the tendon.

Respondent arranged for Petitioner to be examined by Dr. Mark Miller on April 11, 2011. Dr. Miller testified by evidence deposition (Rx3) that he is an orthopedic surgeon who is a shoulder specialist. Dr. Miller agreed that Petitioner has a diagnosis of tendonopathy with changes to the extensor carpi radialis brevis that is a fairly standard tennis elbow. Dr. Miller was of the opinion that the left elbow condition was not work related as he felt the extensor carpi radialis brevis tendon is not involved during the typing process. When pressed on cross-examination as to his opinion, he responded "I don't have a great answer for you."

Concerning the left shoulder, Dr. Miller felt that Petitioner had a OS acromial which was not caused by work. Dr. Miller felt that when you are typing, you are not using your shoulder, so unless you perform a lot of overhead work he could not attribute the condition to work. Dr. Miller during his testimony was under the impression that Petitioner would reach overhead once every 12 minutes or so during a 50 hour workweek. He did not believe this could be defined as "repetitive" which he considered several times a minute lifting the arm overhead. The work place analysis Dr. Miller relied upon (Rx2) does not mention the location or dimensions of her printer.

Based upon the above, the Arbitrator finds the opinions of Dr. Garst to be more credible than those of Dr. Miller and as such, finds that on November 16, 2010, Petitioner sustained accidental injuries that arose out of and in the course of her employment by Respondent and that manifested itself from repetitive trauma on that date.

Based further upon the above, the Arbitrator finds that the condition of ill-being to the left elbow and left shoulder are causally related to the accidental injury of November 16, 2010.

*J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?*

Petitioner introduced into evidence the following medical charges that were incurred after this accident:

Great Plains Orthopedics (Dr. Garst)	\$ 604.40
Proctor Hospital	\$ 559.72
HCH Administration	\$4,213.45
Out of Pocket medical expenses:	\$ 287.06

These charges total \$5,664.63.

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings the Arbitrator awards the above charges pursuant to the medical fee schedule created by the Act, as those charges represent reasonable and necessary medical care and treatment designed to cure or relieve the condition of ill-being sustained by this accidental injury.

Respondent is entitled to receive a credit as to all amounts paid by them.

*K. Is Petitioner entitled to any prospective medical care?*

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, the Arbitrator further finds that the prescribed surgery to the left elbow by Dr. Garst represents reasonable and necessary medical care and treatment designed to cure or relieve the condition of ill-being caused by this accidental injury, and orders Respondent to authorize and pay for same.

No order shall issue as to the left shoulder in accordance with the opinion of Dr. Garst as to the need for surgery to that portion of the body at this time.

All claims for prospective medical care and treatment to the right elbow and right shoulder shall be addressed by this Arbitrator in the decision issued in case no. 11 WC 39290, which was consolidated and heard with this matter.

*N. Is Respondent due any credit?*

See findings of this Arbitrator in "J" above.

STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF ADAMS )

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="up"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

**BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION**

LAURA STEPHENS,

Petitioner,

14 IV CC 0107

vs.

NO: 10 WC 29987

STATE OF ILLINOIS – ILLINOIS VETERANS' HOME, QUINCY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causation, temporary total disability, and medical expenses both current and prospective, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total disability compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

This case has been subject to a tortuous procedural history. Previously, the Commission struck Respondent's brief and denied orals. In addition, Respondent filed a motion to reopen proofs apparently in reference to the incomplete records of Dr. Huang submitted as Petitioner's Exhibit 4. A hearing was held on October 24, 2013 before Commissioner Mario Basurto in Springfield. At the hearing Respondent moved to withdraw its motion. Petitioner's lawyer demanded sanctions under Supreme Court Rule 137, penalties under section 19(k) penalties, and attorney fees under section 16. He later filed a motion to that effect. Petitioner's lawyer asserted it took him 11 hours to prepare for the hearing and to drive back and forth to Springfield and seeks \$150 an hour for that time. The motion was taken under advisement and deferred until the Decision on Review was filed.





It would appear the Commission does not have authority to imposed sanctions for frivolous pleadings pursuant to Supreme Court Rule 137. The Supreme Court rules are the rules for practice before the courts of Illinois. Supreme Court 137 rule specifies that the "court" may impose sanctions for frivolous pleadings; the Commission is not a "court." The Commission has promulgated its own Rules for practice before the Commission and such practice is subject to those rules and not subject to the rules promulgated by the Supreme Court for practice before the courts of Illinois. The rules of the Commission do not authorize sanctions for frivolous pleadings.

Regarding penalties and fees, Respondent's motion to reopen proofs was apparently based on an allegation that Petitioner did not submit a complete set of medical records. Respondent wanted to supplement the record with the "missing" records. However, it had submitted into evidence a complete set of those records at arbitration. Certainly, the Commission does not favor such superfluous pleadings. Petitioner's position is well taken. However, the travel and costs could have been avoided by appropriate communication in advance of said hearing. In addition, the Commission does not consider section 19(k) penalties appropriate because there is no allegation that there was an unreasonable or vexatious delay in the payment of benefits to Petitioner. Therefore, Petitioner's motion for sanctions pursuant to Supreme Court Rule 137 and for penalties and fees pursuant to sections 19(k) and 16 is denied.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 7, 2013 is hereby affirmed and adopted.

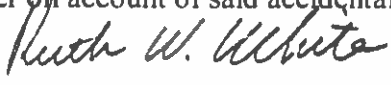
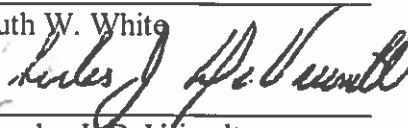

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

DATED: FEB 13 2014

RWW/dw  
Disc. - 1/28/14  
46

  
Ruth W. White  
  
Charles J. DeVriendt  
  
Michael J. Brennan



ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF 19(b) DECISION OF ARBITRATOR

**STEPHENS, LAURA**

Employee/Petitioner

Case# **10WC029987**

**ILLINOIS VETERANS HOME**

Employer/Respondent

**141WCC0107**

On 5/7/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0293 KATZ FRIEDMAN EAGLE ET AL  
JASON CARROLL  
77 W WASHINGTON ST 20TH FL  
CHICAGO, IL 60602

0502 ST EMPLOYMENT RETIREMENT SYSTEMS  
2101 S VETERANS PARKWAY\*  
PO BOX 19255  
SPRINGFIELD, IL 62794-9255

3291 ASSISTANT ATTORNEY GENERAL  
DIANA E WISE  
500 S SECOND ST  
SPRINGFIELD, IL 62706

0499 DEPT OF CENTRAL MGMT SERVICES  
MGR WORKMENS COMP RISK MGMT  
801 S SEVENTH ST 6 MAIN  
PO BOX 19208  
SPRINGFIELD, IL 62794-9208

0498 STATE OF ILLINOIS  
ATTORNEY GENERAL  
100 W RANDOLPH ST  
13TH FLOOR  
CHICAGO, IL 60601-3227

CERTIFIED as a true and correct copy  
purported to be ILCS 305/14

MAY 7 2013



*[Signature]*  
KIMBERLY B. JANAS Secretary  
Illinois Workers' Compensation Commission

STATE OF ILLINOIS )  
)SS.  
COUNTY OF Adams )

☐ Injured Workers' Benefit Fund (§4(d))  
☐ Rate Adjustment Fund (§8(g))  
☐ Second Injury Fund (§8(e)18)  
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION  
19(b)

Laura Stephens

Employee/Petitioner

v.

Illinois Veterans Home

Employer/Respondent

Case # 10 WC 29987

Consolidated cases: N/A

1411CC0107

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Lindsay**, Arbitrator of the Commission, in the city of **Quincy**, on **March 6, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☒ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☒ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☒ Other Petitioner's entitlement to a vocational rehabilitation assessment

## FINDINGS

On the date of accident, **July 31, 2010**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$32,224.82**; the average weekly wage was **\$749.42**.

On the date of accident, Petitioner was **43** years of age, *single* with **0** dependent children.

Respondent *has not* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$30,619.97** in TTD, **\$0** in TPD, **\$0** in maintenance, **\$0** in non-occupational indemnity disability benefits, and **\$0** for other benefits for which credit may be allowed under Section 8(j) of the Act.

Respondent is entitled to a credit of for any medical bills it has paid through its group medical plan for which credit may be allowed under Section 8(j) of the Act.

## ORDER

*Respondent shall pay reasonable and necessary medical services directly to the Petitioner, pursuant to the fee schedule, of \$3,276.74 for Quincy Medical Group; \$481.00 for Springfield Clinic; \$66,301.00 for Dr. Michel Malek; \$19,413.40 for United Surgical Assistants; \$3,097.70 for Professional Imaging; \$743.50 for Clinical Radiologists; \$47.00 for Joliet Radiological; \$10,274.13 for Our Lady of the Resurrection Hospital; and \$220.00 for Washington University as provided in Sections 8(a) and 8.2 of the Act.*

*Respondent shall pay Petitioner temporary total disability benefits of \$499.61/week for 73 4/7 weeks, commencing August 1, 2010 through January 7, 2011 and February 10, 2011 through January 30, 2012, as provided in Section 8(b) of the Act.*

*Respondent shall pay Petitioner maintenance benefits of \$499.61/week for 57 2/7 weeks, commencing January 31, 2012 through March 6, 2013, as provided in Section 8(a) of the Act.*


*Respondent shall authorize and pay for an initial vocational rehabilitation assessment by a certified counselor as provided in Section 8(a) of the Act and the Rules Governing Practice Before the Illinois Workers' Compensation Commission.*

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

141WCC0107

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator

May 2, 2013

Date

ICArbDec19(b)

MAY -7 2013

**Laura Stephens v. Illinois Veterans Home, 10 WC 29987 (19(b))**

Petitioner alleges an injury to her neck and body occurring on July 31, 2010. The issues in dispute are: accident; causal connection; medical expenses; temporary total disability; maintenance, and Petitioner's entitlement to a vocational assessment. Petitioner was the only witness testifying at the time of trial.

**The Arbitrator finds:**

Petitioner testified that she graduated from high school in 1984 and obtained her CNA through Kankakee Community College in Kankakee, Illinois in approximately 1994. Petitioner testified that she began working for Respondent as a "Veterans Nursing Assistant Certified" ("VNAC") in October of 2001. Petitioner explained that Respondent is a retirement facility for retired veterans.

Petitioner testified that as a VNAC at Respondent, her duties included total care of residents. Petitioner explained that as a VNAC, Petitioner bathed, dressed, fed, put residents in wheelchairs, took them to their appointments, cleaned rooms, made beds, and assisted with their activities of everyday living.

**Petitioner's Prior Medical History**

Petitioner testified regarding her prior medical history, including a prior neck surgery and shoulder surgery. On February 20, 2005, Petitioner sustained an injury to her neck while working for Respondent. As a result of that accident, Petitioner was diagnosed with a bulging disc at C5-6 and a broad-based disc protrusion at C6-7. (PX 1)

An MRI of Petitioner's cervical spine performed on 5/6/2005 at Quincy Medical Group (QMG), showed reversal of the cervical lordosis. It stated that there was a moderate size disk osteophyte complex at the C6-7 level causing some type of spinal canal stenosis with minimal spinal cord compromise and bilateral foraminal narrowing. There was also a much smaller disk osteophyte complete seen at C5-6 with minimal left neural foraminal narrowing. (PX 1)

Petitioner underwent a cervical fusion surgery performed by Dr. Miles at Columbia Orthopedic Group in September of 2005. (PX 14)

On 1/13/2006, Petitioner saw Dr. Diana Franklin, a chiropractor for severe headaches and stabbing neck pain after a 1/13/2006 work accident where she was assisting a resident who pulled back against her. Petitioner complained of neck pain going into her left arm. Petitioner reported that her pain was worse when she coughed/sneezed, bent forward, lifted, pushed, pulled or turned her head. Petitioner reported that the neck pain work her during the night and was affected by changes in the weather. Petitioner reported that she had neck stiffness and headaches. (RX 5)



Petitioner treated with Dr. Franklin on 1/17/2006, 1/19/2006, 1/20/2006, 1/24/2006, 1/27/2006, 2/3/2006, 2/6/2006, 2/17/2006 and 2/21/2006. On 2/26/2006, Petitioner reported that she had pain from the left side of her neck down to her left arm and fingers. Petitioner reported that she had pain on the right side of her neck by her shoulder. A slight headache was noted on January 20, 2006. (RX 5)

At her March 9, 2006 follow-up visit with Dr. Miles, Dr. Miles released Petitioner back to full duty work. (PX14). At her final visit with Dr. Miles on May 23, 2006, Dr. Miles released Petitioner from treatment at maximum medical improvement and continued her full duty work status. Petitioner testified that she continued working full duty for Respondent upon her release from treatment by Dr. Miles. Petitioner was to return in one year but didn't.

On 11/17/2006, Petitioner presented to Dr. Huang, her primary care physician, complaining of neck pain and stiffness. Dr. Huang prescribed Petitioner Naproxen 500 mg and Skelaxin 800 mg. and took Petitioner off work. (RX 2)

On 11/18/2006, Petitioner called Dr. Huang and reported that the Naproxen was not helping. At that time, Dr. Huang prescribed Petitioner Darvocet 40 mg and gave her an off-work slip covering 11/16/2006 and 11/17/2006. (RX 2)

On 10/25/2007, Petitioner again saw Dr. Huang for the pain in her neck. She had been having neck pain for two days with headaches, too. She requested a refill of her medications. Dr. Huang prescribed her Lortab 7.5/500 mg and Ambien 10 mg. (RX 2)

On 12/7/2007, Petitioner again saw Dr. Huang complaining of neck pain and headaches. She requested a refill of her Adderall and Ambien and wanted to discuss her Lortab. Dr. Huang prescribed her a refill of Adderall 20 mg and Ambien 10 mg and, additionally, prescribed Petitioner Ultram 100 mg. (RX 2)

On 2/16/2008, Petitioner saw Dr. Huang complaining of neck pain with range of motion. She stated that her neck hurt and her arms were going numb. Petitioner stated that her left arm gave out at work and that she lifted patients at the Vet Home that caused neck pain. Dr. Huang prescribed Petitioner Lortab 7.5/500 and Flexeril 10 mg and gave her an off-work slip for 2/16/2008. Petitioner was scheduled for an MRI at Blessing Hospital on February 27, 2008. (RX 2)

On 3/28/2008 and 4/7/2008, Petitioner was scheduled to undergo an x-ray of her cervical spine at QMG at the referral of Dr. Huang, but it was cancelled. (PX 1)

On 5/19/2008, Petitioner saw Dr. Huang, stating that she had hurt her lower back at work. She reported that she still had some Lortab or Darvocet at home, but Dr. Huang prescribed her Celebrex 300 mg to use if the Lortab was not working. (RX 2)

On 8/4/2008, Petitioner saw Dr. Huang complaining of a headache the day before and requesting a work excuse. Dr. Huang provided Petitioner a off-work slip for 8/3/2008. (RX 2)

On 8/6/2008, Petitioner saw Dr. Huang for right leg pain with swelling and discoloration. She reported that her foot had been run over by a patient's wheelchair. (RX 2)

On 8/7/2008, Petitioner saw Dr. Huang, complaining of leg pain and requesting a work excuse. Dr. Huang gave Petitioner an off-work slip for 8/8, 8/9 and 9/11/2008. (RX 2)

On 8/7/2008, Petitioner then went to Dr. Arndt at QMG Prompt care for her right leg injury. Dr. Arndt prescribed Petitioner Relafen 500 mg, a drug used to treat pain caused by arthritis or osteoarthritis. (PX 1)

On 8/11/2008, Petitioner saw Dr. Huang for her right leg and requested an extension of her work excuse. Dr. Huang extended Petitioner's off-work slip from 8/11 to 8/17/2008. (RX 2)

On 8/18/2008, Petitioner saw Dr. Huang for her right leg and requested an extension of her work excuse. Dr. Huang extended Petitioner's off-work slip from 8/18 to 8/25/2008. (RX 2)

On 8/25/2008, Petitioner saw Dr. Huang for her right leg. He gave her a work excuse from 8/7 to 8/25/2008 and referred her to QMG for an MRI on 9/2/2008. (RX 2)

On 8/26/2008, Petitioner returned to Dr. Huang and requested another off-work slip. She stated that her leg hurt when she went back to work moving patients. Dr. Huang gave Petitioner a work excuse for 8/26 to 9/2/08. (RX 2)

On 9/2/2008, Petitioner had an MRI of her right calf, which showed a relatively low-grade partial tear at the muscolotendinous junction of the medial head of the gastrocnemius. Petitioner also presented to Dr. Huang, who gave Petitioner a slip taking her off-work indefinitely. (PX 1)

On 9/4/2008, Petitioner saw Dr. Huang, who evaluated her MRI. Dr. Huang diagnosed Petitioner with a muscle tear of the right leg and Petitioner reported her right leg was better. (RX 2)

On 9/11/2008, Petitioner saw Dr. Huang for her right leg. Petitioner reported that her right leg hurt when she was working at the Home. Dr. Huang gave Petitioner a work excuse for 9/12 to 9/18/13. (RX 2)

On 9/18/2008, Petitioner saw Dr. Huang for her right leg. Petitioner reported that she only had mild tenderness when weight bearing. Dr. Huang gave Petitioner a work excuse for 9/19 to 9/24/13. (RX 2)

On 9/24/2008, Petitioner saw Dr. Huang for her right leg. Petitioner reported she was doing well and her muscle tear had improved. (RX 2)

On 10/31/2008, Petitioner underwent an MRI of the cervical spine at the request of Dr. Huang. The MRI's clinical history stated that Petitioner had headaches and neck pain, along with bilateral arm tingling and numbness. The MRI showed loss of the normal cervical lordosis. (PX 1) The report stated:

There is straightening of the normal cervical lordosis from the levels of C2 to C5. Kyphosis extends from C5-C7. The degree alignment abnormality appears similar to the study dated 5/6/05. Since the prior examination, there has been surgery on the C6-C7 levels. The degree of spinal stenosis previously identified at the C6-C7 level appears to be improved.

At the level of C2-C3, the central canal and neural foramina are widely patent.

At the level of C3-C4, the central canal and neural foramina are widely patent.

At the level of C4-C5, the central canal and neural foramina are widely patent.

At the level of C5-C6, there is a broadbased posterior disk bulge, which flattens the thecal sac anteriorly. There is loss of CSF signal anterior to the cord. CSF signal is preserved posterior to the cord.

At the level of C6-C7, there is broadbased posterior disk bulge with flattening of the thecal sac. Mild neural forminal stenosis is identified bilaterally. The degree of stenosis is improved since the presurgical evaluation dated 5/6/2005.

At the level of C7-T1, the central canal and neural foramina are widely patent.

The MRI's impression was loss of the normal cervical lordosis with kyphotic abnormality identified at the lower cervical spine. Overall, the kyphotic abnormality appears similar to the study dated 5/6/2005. Postoperative changes show improvement in spinal stenosis at the C6-C7 level. (PX 1)

On 12/8/2008, Petitioner saw Dr. Emilio Tayag, an orthopedic surgeon. Cindy Huang, Dr. Huang's CNP had referred Petitioner to Dr. Tayag for Petitioner's neck pain. Dr. Tayag reported that Petitioner had neck surgery in 2005 and was seeing him due to her neck pain with moderate to severe headaches. Petitioner reported constant neck pain that radiated to her shoulder. She reported that this pain started in February 22, 2005 when she moved a patient as a CNA. According to Petitioner, she felt better after her surgery, until a year after that, when she started getting tingling sensations on both of her upper extremities and associated extreme headaches and sensitivity to cold weather.

Petitioner reported that her pain was now radiating to both her shoulders and to her clavicle with a tingling sensation on the shoulders down to the fingers. Petitioner reported that she had been dropping things and that her symptoms were worse with excessive lifting and occasionally sneezing. Petitioner also reported that her symptoms were increased by bending and lying down and that they awakened her during sleep. (PX 1)

Dr. Tayag noted that Petitioner was taking Adderrall 20mg and Ambien 10mg as needed and Motrin 800mg t.i.d. Petitioner reported that work aggravated her symptoms. Petitioner reported that her hobbies included playing with her grandkids, motorcycle riding, bicycle riding, working out, yardwork and walking. (PX 1)

Petitioner stated that her current pain level was "0-25," which she described as mild. Petitioner reported that she was hurting in the neck, arms, hands, back, lower back, clavicle, and shoulders. She stated her goals included increased relief from pain and numbness and weakness and headaches. (PX 1)

For her exam, Dr. Tayag noted Petitioner's musculoskeletal symptoms included neck pain, muscle pain and weakness, arthritis, joint pain and swelling. Petitioner's neurologic symptoms were headaches, change in speech, vision, memory, numbness, tingling, balance problems, and sinus problems. Petitioner had a negative straight leg raise test. (PX 1)

Dr. Tayag diagnosed Petitioner with neck pain and cervicalgia with radiculopathy, possibly from pseudoarthrosis. At that time, Dr. Tayag stated that Petitioner could take Ibuprofen 800 mg. 3 to 4 times per day and should return to clinic in 4 weeks. Dr. Tayag also prescribed physical therapy for Petitioner and scheduled her for an MRI of her cervical spine. Dr. Tayag stated, "If the patient has pseudoarthrosis, we might need to refuse the C6-C7 level." (PX 1)

On 12/8/2008, Petitioner underwent an x-ray of her cervical spine. The x-ray showed a slight anterior translation of C2 on C3 as well as C3 on C4 with flexion positioning, as compared to extension positioning. It also showed an anterior stabilization plate at C6-7. There was no evidence of instability between flexion and extension on C5-C7. (PX 1)

On 12/18/2008, Petitioner underwent the MRI of the cervical spine with flexion and extension. (PX 1) When compared to the 10/31/2008 MRI, the 12/8/2008 findings were:

There is slight anterior translation of C2 on C3 as well as C3 on C4 with flexion positioning, as compared to extension positioning. Anterior stabilization plate is identified at C6-C7. The C5 through C7 levels show no evidence of instability between flexion and extension positioning. No evidence of acute hardware complication.

On 9/15/2009, Petitioner returned to see Dr. Huang. She requested a refill on her Ambien & Adderall. Dr. Huang prescribed Petitioner Nexium, Ambien 10 mg and Adderall 20 mg. (RX 2).

Petitioner also testified that on October 16, 2009, she sustained another accident while working for Respondent. Petitioner testified that Petitioner injured her right shoulder in that accident.

On 10/16/2009, Petitioner was involved in a work accident and injured her right shoulder. Petitioner saw Dr. Wallace at QMG's prompt care, stating that a patient had yanked her right arm at work, causing pain across her right shoulder, left neck and upper back. Dr. Wallace noted that Petitioner complained of right shoulder and neck pain. Dr. Wallace noted that Petitioner complained of pain across the right upper neck and across the back of the right shoulder and into the AC joint of the shoulder. Dr. Wallace noted that Petitioner complained that she had a little bit of pain across the left neck as well, but most of the problems on the right. Petitioner was placed on light duty. Dr. Wallace noted that Petitioner reported that she was having no problems prior to this incident. (PX 1)

10/28/2009, Petitioner again saw Dr. Wallace. Petitioner reported that she pain in her neck that radiates down to the arm and fingers. She stated that it felt a little like numbness and tingling, but there was pain over the AC joint of her shoulder as well. Petitioner's light duty was continued. Petitioner acknowledged a previous history of cervical spine surgery and reported both neck and shoulder pain at the time of her examination. Dr. Wallace again specifically noted that Petitioner had a cervical spine issue in the past, but that she was having no problems prior to the acute injury on October 16. (PX 1)

On 10/30/2009, Petitioner was seen at QMG Orthopedics for shoulder and neck pain per the referral of Dr. Wallace. Petitioner complained of chest pain, muscle weakness, numbness and tingling, and visual changes. Jean Cross, a CNP at QMG-Orthopedics, noted that she was now having more neurological radicular symptoms, as well. Ms. Cross noted that Petitioner felt weak and had a burning pain and headache. It was noted that Petitioner had neck tenderness and abnormal neck range of motion, as well as shoulder tenderness and abnormal range of motion. Petitioner's light duty was continued and she was referred for physical therapy. (PX 1)

On a QMG Orthopedics Department Medical History – Patient Intake form filled out on 10/30/2009, Petitioner stated she was being treated for shoulder and neck pain. Petitioner stated that she was experiencing chest pain, muscle weakness, numbness and tingling, and visual changes. (PX 1)

Petitioner began shoulder therapy on November 2, 2009. (PX 1)

On 11/9/2009, Petitioner reported to her therapist that there was no change in her pain in the right shoulder. Additionally, she reported increased burning through the neck,

and numbness and tingling throughout the right upper extremity and in the right hand. (PX 1)

On 11/10/2009, Petitioner was seen by Jean Cross, a CNP at QMG- Orthopedics. Petitioner complained of numbness and tingling in her arm, mild neck pain, and shoulder pain, that seemed to be localized in the anterior shoulder, more so than posteriorly. Petitioner's light duty was extended. (PX 1)

On 11/16/2009, Petitioner underwent an MRI of her right shoulder. The MRI showed laterally downsloping configuration to the acromion, which could contribute to the clinical syndrome of impingement. Additionally, the MRI showed supraspinatus and less prominent subscapularis tendinopathy and a posterior labral tear. (PX 1)

On 11/18/2009, Petitioner again saw Jean Cross. According to the Intake Note, Petitioner's neck also ached. Petitioner complained of pain in the shoulder, down the arm, and posteriorly. Ms. Cross recommended an injection in the shoulder and stated that if the injection did not give her any relief, that she would consider looking further, even up into the neck. Petitioner's light duty was extended. (PX 1)

On 11/24/2009, Petitioner saw Steven Dement, a PA, at QMG-Orthopedics. Mr. Dement stated that Petitioner had been struggling with a partial rotator cuff tear and impingement. Mr. Dement noted that Petitioner had undergone an injection through Jean Cross on 11/18/2009. Petitioner stated that she had slightly more free movement and a little better functional activity level. Mr. Dement recommended that Petitioner continue her conservative therapy for another few weeks. (PX 1)

On 12/17/2009, Petitioner saw Dr. Crickard at QMG-Orthopedics. Dr. Crickard stated that the injection one month ago helped, but that Petitioner's pain had returned. Dr. Crickard recommended surgery, and Petitioner stated that she wanted to go to Dr. Greatting in Springfield for the surgery. Petitioner's light duty was extended. (PX 1)

On 1/2/2010, Petitioner again saw Dr. Huang. Dr. Huang refilled Petitioner's Ambien and gave her a work excuse for 1/1 to 1/2/2010. (RX 2)

On 1/7/2010, Petitioner presented to Dr. Wallace at QMG and requested a referral to go to St. Louis for her shoulder surgery. Petitioner was also seeking another shoulder injection but that could not be done at QMC. Instead, Petitioner was given a prednisone taper. Petitioner remained on light duty. (PX 1)

On 2/12/2010, Petitioner saw Dr. Farley, an orthopedic surgeon at Orthopedics & Sports Medicine. Petitioner reported right shoulder pain since 10/16/2009. Dr. Farley specifically noted that Petitioner denied any accident or injury pre-dating or post-dating the October 16<sup>th</sup> accident. Dr. Farley continued Petitioner's light duty restrictions and referred her to physical therapy. (PX 2)

Petitioner underwent right shoulder surgery performed by Dr. Timothy Farley at Chesterfield Surgery Center on February 25, 2010. (PX2)

Petitioner provided information for a Functional Intake Summary on February 26, 2010. Her current health problems included back pain, headaches, and prior surgery. (PX 1)

On 3/9/2010, Petitioner saw Dr. Farley as she was two weeks post-op of her right shoulder surgery. Dr. Farley noted that Petitioner had no pain within her shoulder. Dr. Farley continued Petitioner's light duty. (PX 2)

On 3/12/2010, Petitioner saw Dr. Huang for lower lumbar pain. Petitioner reported that she was doing squats the day before and heard something pop. Dr. Huang prescribed the Lortab and Flexeril and scheduled her for a x-ray of her lumbar spine. (RX 2)

On 3/15/2010, Petitioner underwent an x-ray of the lumbar spine that showed moderate narrowing of the L4-5 disc space with vacuum phenomena and spurring anterior and posteriorly about this disc space. The x-ray also showed minor spurring about the L3-4 disc space. (PX 1)

On 3/17/2010, Dr. Huang notified Petitioner that the x-ray showed disc disease of the lumbar spine and scheduled her to come back in two weeks. (RX 2)

On 4/6/2010, Petitioner saw Dr. Farley, as she was 6 weeks out from her right shoulder arthroscopy. Dr. Farley noted that Petitioner was doing well, having minimal discomfort in and around her shoulder. Dr. Farley continued to Petitioner's light duty. (PX 2)

On 4/8/2010, Petitioner saw Dr. Huang for lower lumbar pain. Petitioner reported muscle pain and trouble sleeping. Petitioner requested a refill of her Ambien, which Dr. Huang prescribed. (RX 2)

On 5/18/2010, Petitioner saw Dr. Farley, as she was 12 weeks out from right shoulder arthroscopy. Dr. Farley noted that Petitioner had pain at the end of the range of her terminal forward flexion. Dr. Farley extended Petitioner's light duty and prescribed Petitioner work hardening for 3 days a week for 2 weeks. At her May 18, 2010 visit, Dr. Farley advised her to return to work full duty as of July 7, 2010. (Id.). (PX 2)

On 5/19/2010, Petitioner saw Dr. Huang due to neck pain. Petitioner reported that she had neck pain and headaches due to that neck pain. Petitioner reported to Dr. Huang that she was unable to go to work that day due to the neck pain and needed a work excuse. Dr. Huang gave Petitioner a work excuse for 5/19/2010. (RX 2)

Petitioner underwent physical therapy/work hardening for her right shoulder beginning on February 26, 2010 and concluding on June 2, 2010 (a total of 24 visits). The

program was progressive in nature with increasing treatment time (reaching a maximum of three hours) in an effort to improve Petitioner's right shoulder workability. As of the last visit Petitioner exhibited no pain with strengthening activity and had progressed to the three hour work-out with no problem. (PX 1)

On 6/14/2010, Petitioner saw Dr. Huang regarding dizziness. Petitioner stated that she was especially light-headed in the morning. Petitioner stated that she had a headache and had taken Ambien. Dr. Huang gave her an off-work slip for 6/13 to 6/14/2011. (RX 2)

On 6/22/2010, Petitioner saw Dr. Farley. Petitioner reported that she had undergone a fairly disorganized course of work hardening with multiple different people working with her. Petitioner stated that the circumstances of her activities at therapy did not at all reflect her work responsibilities. Dr. Farley noted that Petitioner had only undergone one 3-hour work hardening visit, and that visit had offered her significant improvement by her own admission. Therefore, Dr. Farley recommend three visits of work hardening to be organized, followed by return to full activity without restriction after the third visit. Dr. Farley gave Petitioner a slip returning her to work full duty on 6/29/2011. (PX 2)

On 6/24/2010, Petitioner called and cancelled all of her work hardening visits, stating that she had returned to work full duty. (PX 1)

On July 14, 2010, Petitioner complained of a severe headache to Dr. Huang the day before as well as pain in her shoulder. However, Dr. Huang noted that at the time of that visit, Petitioner was "fine." (PX 1)

On 7/15/2010, Petitioner refilled her Ambien (generic as Zolpidem) at Walgreens. (RX 4)

On 7/27/2010, Petitioner saw Dr. Farley, as she was 5 months out from her right shoulder arthroscopy. Dr. Farley noted that Petitioner had returned to work full duty, but was now complaining of episodic discomfort over the lateral aspect of her right shoulder in the mid-deltoid region near the lateral based portal. Dr. Farley stated, "I think she can continue to work without restriction. I think she will continue to note improvement of comfort over the first year out from the time of surgery." Dr. Farley placed Petitioner at maximum medical improvement (MMI). (PX 2)

### **Petitioner's Testimony regarding her Accident**

Petitioner testified that she was working full-time as a VNAC for Respondent on July 31, 2010. Petitioner further testified that upon arriving to work on the morning of July 31, 2010, she felt fine and went about her regular duties. Petitioner testified that on that day, which was a Saturday, she sustained an accident. Petitioner testified that she was using a "Sara Lift" to move a resident from a toilet to a chair. Petitioner testified that this resident was approximately six feet tall and weighed 240 pounds. Petitioner



explained that the "Sara Lift" is a machine with wheels on the bottom and arms that raise up and down. Petitioner testified that she placed a sling from the machine around the resident to aid her in lifting him onto the chair from the toilet.

Petitioner testified that she had the sling around the resident with her right hand and the lift with her left hand. As Petitioner was maneuvering the resident, he reared back in his seat and caused Petitioner's right arm to pull. Petitioner testified that she felt immediate sharp pain go through her right shoulder and into her neck along with a feeling of dizziness. Petitioner stated the pain went all the way through to the left side of her neck. Petitioner described the pain as stabbing, searing, and burning.

The parties stipulated to notice.

#### **Petitioner's Medical Treatment Immediately Following Her Accident**

Petitioner testified that her accident occurred with only approximately forty-five minutes left in her work day. Petitioner was the only one left on her floor at that time so Petitioner continued to work and just sort of rode it out.

Petitioner testified that she was scheduled to work the following day, Sunday, August 1, 2010, however, she did not do so because she was still very dizzy and her neck hurt. Petitioner did not see a doctor that day but stayed home and did nothing. The following day, Monday, August 2, 2010, Petitioner testified that she attempted to return to work for Respondent. However, Petitioner testified that after about one half hour, her pain was too severe and she was still very dizzy. Petitioner decided to leave work and went to see Dr. Huang.

On 8/2/2010, Petitioner saw Dr. Huang, complaining of dizzy spells. Petitioner stated that the dizzy spells were not as bad as a few days earlier, but that she has had intermittent dizziness. Petitioner stated that she was unable to work the day before, so Dr. Huang gave her an off-work slip for 7/31/2010 and 8/1/2010. Dr. Huang scheduled Petitioner for a x-ray of her cervical spine and set her up an appointment with Dr. Raskas for 9/2/2010. (RX 2)

On 8/2/2010, Petitioner underwent an x-ray of her cervical spine because of a clinical history of neck pain. The x-ray found reversal of the normal cervical lordosis which was most likely related to patient positioning. Mild osseous neural foraminal stenosis at the left C5-6 level was also noted. (RX 7)

Petitioner testified that she told Dr. Huang about her accident of July 31, 2010 at her visit on August 2. At her initial visit, Dr. Huang noted Petitioner's complaints of neck pain and dizziness. (PX4; RX2) Dr. Huang referred Petitioner to Dr. Raskas and noted an appointment date of September 2, 2010. (Id.)

The following day, August 3, 2010, Petitioner treated with Dr. David Arndt of the Quincy Medical Group pursuant to the referral of Respondent. Dr. Arndt noted Petitioner

injured her neck while moving a patient with a lift at the Illinois Veterans Home. He also noted that Petitioner's shoulder got "tugged" and she had developed pain across the trapezius which extended to the left trapezius. Dr. Arndt noted Petitioner's complaints of, "...vertigo and unsteadiness every second of the day since it happened that Petitioner is awake." Petitioner reported tingling in both arms, but no weakness. Petitioner reported tightness in the posterior cervical musculature and a headache. He noted that Petitioner reported her shoulder surgery of February that same year. (Id.) Dr. Arndt believed Petitioner's neck injury to be mostly soft tissue and suspected her headache and unsteadiness were related to her symptoms. He advised Petitioner to remain off work for the next week. His diagnosis was a cervical sprain with stiffness and, secondarily, headache and unsteadiness. (PX 1)

Petitioner signed her Application for Adjustment of Claim on August 4, 2010. (AX 2)

On 8/10/2010, Petitioner again saw Dr. Arndt. Dr. Arndt noted that Petitioner had significantly less dizziness, but that she continued to have neck discomfort which started in area midline and soft tissues at C7 and radiates into the left trapezius. Petitioner reported that she felt some extension of that pain into the arms, left much more than right. Petitioner reported that her headaches had calmed down, but had not fully resolved. (PX 1)

Dr. Arndt scheduled Petitioner for an MRI and recommended physical therapy to try to get Petitioner back to her light duties at her job site. (PX 1)

On 8/11/2010, Petitioner underwent an MRI of her cervical spine. When compared to 10/31/2008 MRI, the 8/11/2010 MRI did not show any specific change in degree when compared to the earlier study of 10/31/2008. (PX 1) The 8/11/2010 MRI showed:

C2-3: Normal.

C3-4: Some desiccation with minimal diffuse disc bulge. No significant compromise of the canal or exiting roots however.

C4-5: Desiccation and loss of disc height. Minimal diffuse disc bulge. Very slight ventral cord effacement there is shows no change when compared to earlier study.

C5-6: Similar findings with desiccation and loss of disc height. Uncinate hypertrophy bilaterally with minimal encroachment upon each foramen. Due to the diffuse disc bulge there is slight ventral effacement of the cord without abnormal cord change. Again this shows a similar findings to the prior study No abnormal cord signal change. No significant change when compared to the earlier study.

C6-7: Fusion. Some component of bony ridging with disc as well. No significant compromise of the canal or existing roots. Stable appearance when compared to the earlier study.

C7-T1: Relatively well-preserved level as well without change in appearance.

The 8/11/2010 MRI's Impression was: Postoperative changes with fusion at believe spanning the C6 and C7 levels. Reversal of the normal lordotic curvature through these levels as before. Most affected level appears at C5-C6 as might be anticipated. Minimal diffuse disc bulge with ventral effacement of the cord was noted; however, no abnormal cord signal change was seen. The study did not show any specific change in degree when compared to the earlier study of 10/31/2008. (PX 1)

On 8/12/2010, Petitioner returned to see Dr. Arndt. Dr. Arndt reviewed the MRI and found that the results really looked very good. Dr. Arndt noted that there were no areas of nerve impingement in the spinal column. Dr. Arndt noted that Petitioner continued to have some discomfort in her lower cervical and left trapezius areas which were palpably tender. Dr. Arndt returned Petitioner to light duty work on 8/13/2010. (PX 1)

Petitioner underwent physical therapy at QMG on 8/13/201, 8/17/2010 and 8/19/2010. (PX 1)

On 8/25/2010, Petitioner again saw Dr. Arndt. Dr. Arndt stated that Petitioner had not changed much. Dr. Arndt stated the he believed that Petitioner might have worsened, as she was still having dizziness, burning sensation in the posterior cervical area mostly on the left, headache late in the day, and tingling in her fingers at times. Petitioner also described knots in the back of her neck. Petitioner told Dr. Arndt that she was going to see another physician in St. Louis for a second opinion and Dr. Arndt noted that that seemed an excellent idea as nothing that had been done, to date, had really helped her. Dr. Arndt gave Petitioner an off-work slip. (PX 1)

On September 2, 2010, Petitioner had her initial visit with Dr. David Raskas, a physician located in the same office as her shoulder surgeon, Dr. Farley. Dr. Raskas, an orthopedic surgeon, took a history from Petitioner, which included a chief complaint of neck pain with a secondary complaint of radiation into her arms with numbness and tingling in her hands. Petitioner stated she was dropping things and having difficulty lifting things with her left hand. (PX2). He noted her prior history of a neck injury in 2005, which resulted in a fusion done by Dr. Miles as well as her 2010 shoulder surgery. Petitioner advised the doctor that she would have some occasional neck pain and an aching sensation intermittently since her original neck surgery but prior to her accident of July 31, 2010. Petitioner also reported that it would just go away naturally. He also noted Petitioner sustained a jolting injury to her neck when Petitioner was trying to lift a patient with a Sara Lift. He further noted that Petitioner felt nauseous and experienced a lot of neck pain followed by persistent trouble with her upper extremities, including numbness and tingling. (PX 2)

Dr. Raskas reviewed the MRI scan "that she had done"<sup>1</sup> and stated it revealed a central cervical disc herniation at C5-6 along with central canal stenosis at C5-6 and C6-7. Dr. Raskas also stated that x-rays taken that day indicated Petitioner had an incomplete healing of her prior fusion. His impression was cervical pseudoarthrosis with new cervical disc herniation and myelopathy. (Id.). He explained that, "...the injury at work aggravated the pseudoarthrosis and also caused the herniated disc..." (PX 2)

Dr. Raskas recommended a myelogram/CT scan and stated Petitioner would most likely need some type of repair of the pseudoarthrosis and reconstruction at the disc herniation level. He further advised her to remain off of work and concluded that the need for the above testing and her work status was directly related to her work injury. (PX 2)

On 9/7/2010, Petitioner underwent a CT scan due to neck pain with pain and tingling extending down both arms, prior cervical fusion, and possible non-union. (PX 2) The CT showed no distinct bony fusion across this disc space at any point, except for possibly immediately dorsal to the plate, although there is streak artifact through this region. There is loss of usual cervical lordosis. There is retrolisthesis of C5 on C6 as well. The degenerative changes will be described by level below:

C2-3: There is minimal disc bulging but no significant neuroforaminal compromise. The cervical canal appears small on a congenital basis with the midline AP canal diameter at this level measuring 10 mm (lower limits of normal 12 mm)

C3-4: There is mild disc bulging and some uncovertebral and facet arthropathy. There is borderline midline AP canal narrowing but no significant neuroforminal narrowing.

C4-5: There is mild disc bulging, uncovertebral and facet arthropathy. There is mild flattening of the ventral thecal sac but no neuroforminal narrowing and borderline AP canal narrowing.

C5-6: There is broad based disc protrusion flattening the ventral thecal sac and the ventral cord. There is end plate degeneration and bilateral uncovertebral and facet arthropathy. There is mild AP canal narrowing, and moderate bilateral neuroforaminal narrowing.

C6-7: This level has instrumentation, with mild to moderate canal narrowing and moderate to severe bilateral neuroforminal narrowing due to uncovertebral degeneration, and mild facet arthropathy.

C7-T1: Unremarkable.

The CT scan conclusion was C5-6 degenerative changes, concern for non-union of C6-7 fusion, and a small canal on a congenital basis. (PX 2)

On 9/7/2010, Petitioner also underwent a Myelography. The Myelogram showed no suggestion of canal stenosis, but the nerve root sleeves were difficult to visualize on oblique views. Additionally, on lateral views, there is still lucency suggested through the C6-7 disc space with Grade 1 retrolisthesis of C6 on C7. There is no lucency suggested

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<sup>1</sup> Presumably 8/1/10 as that is what is found in PX 3

around the hardware. There are end plate osteophytes and ventral impressions on the thecal sac at all levels from C2-3 through C5-6. (PX 2)

The myelogram conclusion was multilevel degenerative changes. (PX 2)

Petitioner had a follow-up visit with Dr. Raskas on September 9. (PX2). Dr. Raskas reviewed the CT scan and recommended an anterior revision of the fusion plus resection of the herniated disc. In a letter to Respondent, Dr. Raskas again confirmed his belief that the work injury caused the herniated disc and aggravated the pseudoarthrosis. Petitioner testified that Respondent authorized this surgery and it was performed by Dr. Raskas on September 29, 2010. (PX 2; PX3) According to Petitioner's Admission Note of September 27, 2010 Petitioner was injured in a work-related injury causing her C5-6 herniated disc and C6-7 pseudoarthrosis to become symptomatic; for which she might have had symptoms from C6-7 non-fusion in the past. Certainly, the persistence of her symptoms has been caused by the work injury that resulted in a herniated disc at the C5-6 level. (PX 3)

Following this surgery, Petitioner testified she felt relief from the tingling and numbness in her hands and that the "stabbing, sharp pains were pretty much gone." Petitioner continued to follow-up with Dr. Raskas after her surgery.

Petitioner's 10/14/2010 visit was rescheduled for 10/21/2010. (PX 2)

On 10/21/2010, Petitioner saw Dr. Raskas as she was 3 weeks post-op. Dr. Raskas noted that Petitioner was doing well clinically. Dr. Raskas stated that Petitioner was to remain off work until he saw her again, after the first of the year, at which point he believed that she should be able to return to work full duty. (PX 2)

On 12/17/2010, Petitioner again saw Dr. Huang. Petitioner requested a refill of her Ambien and stated that she had had neck surgery in St. Louis, but she still had neck pain. Dr. Huang refilled Petitioner's Ambien 10 mg. (RX 2)

On 1/6/2011, Petitioner again saw Dr. Raskas. Dr. Raskas noted that Petitioner continued to have some left-sided axial neck pain. He noted Petitioner's arms symptoms are gone in terms of numbness and tingling and radiation, but that she continued to have some instability at C4-5 on her flexion/extension x-rays. Petitioner had undergone an x-ray which showed anterior cervical plate and fusion at C5 to C7. The x-rays showed that Petitioner's grafts appeared to be incorporating nicely. The x-ray stated that there was no motion on flexion/extension x-rays. The x-ray impression was healing cervical spine fusion. (PX 2)

Dr. Raskas gave Petitioner work restrictions that he felt might very well become permanent as Petitioner had some mechanical instability at C4-5. Dr. Raskas stated that he did not want to really get into fusing that many levels in Petitioner's neck and that he thought it probably would not lead to an improved level of function. Dr. Raskas stated that Petitioner certainly had no neurological reason for a surgical intervention at that

time. Dr. Raskas stated that Petitioner's fusion looked like it was developing into a solid fusion. (PX 2)

Petitioner returned to work in a light duty capacity for Respondent from January 8, 2011 through February 9, 2011. Petitioner testified that her duties included taking vitals, passing water and linens out, feeding residents, putting away laundry, helping other nurses, and engaging in some paperwork. Petitioner further testified that as she went about these duties her neck and shoulder areas were becoming more uncomfortable. Petitioner described her neck as "irritated" and her headaches as "worsening."

On 2/10/2011, Petitioner again saw Dr. Raskas. Dr. Raskas noted that Petitioner was having a lot of headaches and mechanical neck pain. Petitioner reported that just twisting, turning her neck, or doing light things bothered her. Petitioner reported that her symptoms were worse at the end of the day. Dr. Raskas noted that Petitioner was developing spondylolisthesis at the C4-5 level above her fusion and that she has significant angulation at that level in the neutral posture. Dr. Raskas stated that Petitioner's flexion/extension x-rays did not show any motion at the fused levels at C5-6 and C6-7, but that Petitioner had significant instability at the C4-5 level. Dr. Raskas stated that Petitioner needed a CAT scan and a 4-5 facet block to see if her symptoms were alleviated. Dr. Raskas stated that Petitioner was likely going to need to have her fusion extended up to C4-5 because of the mechanical instability and objective findings on the x-ray. Dr. Raskas stated that Petitioner's x-rays that day did not look like she was necessarily solidly fused. (PX 2)

He recommended facet joint injections and advised her to remain completely off work until after a likely second surgery. (Id.). That same day, Petitioner underwent a CT scan and facet joint injections performed by Dr. Barry Feinberg. (PX7; PX 3)

On 2/10/2011, Petitioner then underwent a CT scan due to a prior fusion in September 2010 with neck pain extending down both arms with numbness and tingling. It was compared to the post-myelogram CT done on 09/07/2010. The 2/10/2011 CT scan showed unusual soft tissue air locules, with clinical correlation recommended. It showed extension of instrumentation to C5-6 with increased kyphotic angulation. (PX 7)

On February 17, 2011, Petitioner had a telephone conversation with Dr. Raskas in which he confirmed his recommendation of another cervical surgery. On 2/17/2011, Petitioner again saw Dr. Raskas, who stated that the CT showed that Petitioner's fusion was not incorporated, as there was some loosening about the hardware and some halos around the screws in C7. Dr. Raskas stated that the graft itself did not appear to be incorporating on the sides at C7. Dr. Raskas also stated that Petitioner had a spondylolisthesis at C4-5. (PX 2)

Dr. Raskas stated that all in all, he thought Petitioner's residual symptoms were related to her spondylolisthesis. Dr. Raskas stated that Petitioner did not appear to have healing of her fusion and that she had some hardware loosening. Dr. Raskas stated that he was recommending a revision anterior decompression and fusion. (PX 2)

According to the Commission website and public records contained therein, Petitioner settled her workers' compensation claim for her shoulder injury (d/a: 10/16/09, 09 WC 49771) and the contracts were approved on April 11, 2011. Petitioner settled her claim for 32.5% loss of use of the right arm.

Petitioner testified that following her phone conversation with Dr. Raskas, Petitioner treated with Dr. Huang on April 19, 2011 to get a referral for a second opinion regarding surgery. (PX4)

On 4/19/2011, Petitioner again saw Dr. Huang. Petitioner requested a refill of her Ambien and stated that she would like to try Celebrex again and Skelaxin. Petitioner requested a referral to Dr. Daniel Adair in Springfield, as she was still having neck pain. Dr. Huang refilled Petitioner's Ambien 10 mg, Celebrex 200 mg and Flexeril 10 mg. Dr. Huang referred Petitioner to Dr. Payne in Springfield. (RX 2)

Petitioner was initially examined by Dr. Payne on May 5, 2011. Petitioner gave a history of undergoing an ACF for a herniated disc in 2005 and that she had done "fairly well" with that until 2010. Petitioner ended up having persistent neck pain and adjacent level disease, was diagnosed with pseudoarthrosis at C6-7 and underwent revision ACF at C5-6-7 from which she did "okay." Dr. Payne's history further states that Petitioner began experiencing neck pain again in February of 2011 and was found to have adjacent level disease at C4-5. Petitioner's complaints included axial spine pain with persistent pain over the triceps albeit mild by description. Petitioner explained she had tried to return to work in January of 2011 light duty and it aggravated her neck too much. Dr. Payne stated in his office notes,

"When I saw Laura today, I did not realize that this was related to a workman's compensation claim. I did not ask her about how this injury started or why it is a compensation claim. I simply was trying to get a good physical exam and history to try to figure out why her neck is giving her persistent pain after two-level ACF."

(PX 5)

Dr. Payne concluded that in order to make an accurate recommendation regarding her neck, he needed to review the February, 2011 CT scan. (PX 5)

At Petitioner's follow-up visit with Dr. Payne on May 13, 2011, he reviewed the CT scan and noted a nonunion at C5-6 and C6-7. He discussed another surgery with her as well but recommended Petitioner see Dr. Dan Riew in St. Louis due to his experience. (PX 5)

Prior to treating with Dr. Riew, Petitioner testified Petitioner returned to Dr. Huang on May 16, 2011<sup>2</sup>. At that visit, Petitioner requested a referral to Dr. Michael

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<sup>2</sup> The office visit may have been May 10, 2011. The date is not entirely legible.

Malek for her continued neck pain. Dr. Huang referred her to Dr. Michel Malek noting the appointment had been made by Petitioner's attorney. (PX4)

Petitioner's initial visit with Dr. Malek, an orthopedic surgeon from Chicago, occurred on June 6, 2011. (PX8). Dr. Malek took a detailed history from Petitioner regarding her July 31, 2010 work accident noting Petitioner stated she twisted to the right side with her right arm elevated and a resident jerked her. He also noted her history of injury in 2005 and 2009. Petitioner reported to the doctor that her symptoms progressed to include pain in her neck with radiation in to her head and tingling in both upper extremities all the way to her fingers. Petitioner denied a history of previous similar episodes. Following his physical examination and review of radiographs, including the CT scans of September 7, 2010 and February 10, 2011, Dr. Malek diagnosed Petitioner with pseudoarthrosis at C5-6 and C6-7, amongst other cervical findings. He recommended a cervical fusion revision surgery. (PX 8)

Dr. Malek reviewed Petitioner's 2/10/2011 CT of cervical spine w/o contrast that was compared to CT myelogram of 9/7/10. Dr. Malek stated that the post-myelogram CT done on 9/7/10 showed broad-based disc protusion flattening of the ventral thecal sac and the ventral cord at C5-C6, with plate degeneration and bilateral uncovertebral and facet arthropathy and to matter at bilateral neuroforaminal narrowing. Dr. Malek stated at C6-C7 there was instrumentation with mild to moderate canal narrowing and moderate to severe bilateral neuroforaminal narrowing. (PX 8)

Dr. Malek stated that the view of the actual films confirm focal kyphosis at the C4-C5 level on the CT scan. Dr. Malek stated that he did not that the fusion at C5-C6 especially has not taken, but also at C6-C7. Dr. Malek stated that there were areas of lucency with compression of the C6 vertebral body to a bare minimum anteriorly. (PX 8)

Dr. Malek told Petitioner that prior to an additional surgery, he wanted an updated MRI scan to make sure that no pathology is present at C3-C4.(PX 8)

Dr. Malek then stated that it was his opinion that he patient's current condition of ill being is directly related to her injury of 7/31/10. Dr. Malek stated that it was "his opinion that of time of her injury of 7/31/10 patient's condition was compensated and not likely to result in the short term in any intervention at the C4-C5 level, or at the C5-C6 or C6-C7 levels. But as a result of the injury of 7/31/10 that condition became aggravated, precipitated or accelerated beyond the natural progression of disease, absent the above injury, resulting in the need for treatment recommended and treatment delivered." (PX 8)

Dr. Malek noted in his office notes, "It is my opinion to a reasonable degree of medical or neurosurgical certainty that the patient's current condition of ill being is directly related to her injury of July 31, 2010." (PX8)

Following her first appointment with Dr. Malek, Petitioner kept her original appointment with Dr. Riew on July 5, 2011, as recommended by Dr. Payne. (PX6)



On 7/5/2011, Petitioner saw Dr. Daniel Riew at Washington University Orthopedics at the request of Dr. Payne. Petitioner reported to Dr. Riew that she had neck pain since 7/31/2010, but her condition had worsened since February of 2011 becoming more consistent and sometimes unbearable. Petitioner stated that the pain started with a neck injury at work. Petitioner reported pain in the right upper back, shoulder, and upper arm and in the left upper back and shoulder. Petitioner reported weakness in the left shoulder and numbness and tingling in the right ring and small fingers that have been present for the last four month. Petitioner reported occasional but severe headaches from neck pain, for which she takes Ibuprofen and Ambien. Petitioner described her occupation as requiring her to lift more than 45 lbs. Her average pain level was described as 5-6/10. Petitioner's physical examination revealed a positive Hoffmann's sign bilaterally. Petitioner's neck pain was noted to be located on the left of the mid-cervical spine. (PX 5, 6)

Dr. Riew told Petitioner that she was not suffering from a dangerous condition, as she was not at a risk for nerve damage. He then stated that if the pain was intolerable, she could pursue surgery. (PX 5, 6)

On 7/26/2011, Petitioner underwent an MRI that was compared to the noncontrast MRI of 2/27/08 and the plain film of 8/2/10. (RX 7) The MRI showed:

At the C2-C3 level, minimal spondylosis is present without significant central canal or neural foraminal narrowing.

At the C3-C4 level, minimal disk and/or osteophyte effaces the anterior thecal sac and approaches the anterior aspect of the cord. No significant central canal stenosis believed to be present. No significant neural foraminal narrowing.

At the C4-C5 level, disk and/or osteophyte effaces the anterior thecal sac and approaches the anterior aspect of the cord. It is difficult to assess the degree of potential narrowing due to metallic artifact. This may also create the appearance of greatest narrowing of the right neural foramina than what is truly present. On the T1 images, no significant foraminal narrowing at this level.

At the C5-C6 level, metallic artifact present. It is doubtful that there is significant central canal stenosis. Artifact extends up to the anterior aspect of the cord. No significant neural foraminal narrowing believed to be present either.

At the C6-C7 level, again metallic artifact present. It is doubtful that there is significant central canal stenosis or neural foraminal narrowing. Evaluation of the neural foramina appears to be best performed on the axial T1 weighted images.

At the C7-T1 level, minimal spondylosis without significant central canal or neural foraminal narrowing.

The MRI found no abnormal signal, expansion or enhancement of the cervical cord. It also found some focal reversal of the normal cervical curvature of the C4

through the C6 levels. The Impression was spondylosis of the cervical spine without obvious significant central canal or neural foraminal narrowing. (RX 7)

On 8/1/2011, Petitioner saw Dr. Huang for her pre-op for exploration C5-7. Petitioner reported a dull pain in her neck. Dr. Huang noted that Petitioner was not to smoke or drink. (RX 2)

Dr. Riew noted the accident of July 31, 2010 as well as Petitioner's worsening of symptoms through February of 2011. He diagnosed Petitioner with pseudoarthrosis at C5-6 and C6-7. He advised Petitioner that they would contact "Workmen's Compensation" for approval of a cervical MRI, an ENT evaluation, and the recommended cervical surgery. (PX 6)

After Petitioner obtained the opinions of Drs. Raskas, Payne, Malek, and Riew, all of whom recommended another cervical surgery due to pseudoarthrosis at C5-6 and C6-7, Petitioner elected to undergo surgery with Dr. Malek. This second surgery was completed by Dr. Malek on August 4, 2011 at Our Lady of the Resurrection Hospital in Chicago. Petitioner underwent an anterior cervical discectomy and fusion at the C4-5, C5-6 and C6-7 levels. Dr. Malek's operative record found evidence of pseudoarthrosis at C6-C7 with moderate foraminal narrowing bilaterally; evidence of pseudoarthrosis at C5-C6 with moderate-to-severe foraminal narrowing bilaterally, worse on the left side; evidence of moderate foraminal narrowing at C4-C5 bilaterally; spondylolisthesis at C4 on C5; and retrolisthesis of C6 on C7. (PX 8, 9)

Petitioner testified that she continued to receive temporary total disability benefits from Respondent while she remained off work.

On 8/15/2011, Petitioner again saw Dr. Malek, as she was 9 days post C4-C7 ACDF. Dr. Malek found good clinical results. Dr. Malek ordered an x-ray and prescribed physical therapy to begin in a month for 8 weeks. Dr. Malek believed Petitioner would be at MMI after that. (PX 8)

On 9/21/2011, Petitioner saw Dr. Dietrich, for her well women exam. Dr. Dietrich noted that the Petition had undergone a breast augmentation sometime between her last visit on 7/21/2010 and her 9/21/2011 visit. (RX 6)

On 10/2/2011, Petitioner again saw Dr. Malek. Dr. Malek noted that Petitioner reported improved in her symptoms after the cervical fusion with her activities of daily living, but that she still had a decreased tolerance to activity. Dr. Malek prescribed Petitioner physical therapy for six weeks. (PX 8)

On 10/25/2011, Petitioner again saw Dr. Huang. Petitioner requested a refill of her Ambien and Lexapro, as she was having pain after her surgery. Petitioner also requested a prescription for Norco. Dr. Huang diagnosed mild neck pain and prescribed Petitioner Lexapro 10 mg, Norco 10/325 mg, and Ambien 10 mg. (RX 2)

At the request of Respondent, Petitioner underwent a Section 12 examination performed by Dr. Joseph Williams on November 7, 2011. (RX1). Petitioner testified that she recalled this examination and provided Dr. Williams with a history of her accident of July 31, 2010. Petitioner testified she was in his office for ten to fifteen minutes and that Dr. Williams was present in his office with her for seven to ten minutes. Petitioner testified he performed a short physical examination, which included turning her head from side to side, squeezing his fingers, checked her reflexes, and touch her toes.

In his report, Dr. Williams concluded Petitioner had chronic axial neck pain and cervical degenerative disc disease and that her current condition was not causally related to her accident of July 31, 2010. (RX 1, p. 54) He stated that the radiographic findings did not appear to be consistent with the accident as described to him by Ms. Stephens. (Id.). He felt the findings were degenerative and related to age and genetic factors. (RX 1)

Dr. Williams stated the findings can be related to smoking but confirmed Petitioner is not a smoker. (RX 1, p. 54) His "assumption" was that the degenerative changes in her cervical spine were related to her previous surgeries as well as her age and genetic changes. (RX 1) He did not specify within his report which surgeries were related to the changes. (See RX1) He stated Petitioner was capable of performing her full duties as a certified nursing assistant. RX 1, p. 55)

On 11/2/2011, Petitioner underwent an x-ray of her cervical spine. Dr. Malek noted that the xray looked excellent, and that he was very pleased, but that he wanted to make sure that there was some bony growth there. Dr. Malek stated that he wanted Petitioner to complete her physical therapy and provided her an off-work slip for 3-4 weeks. Dr. Malek stated that he wanted light duty to start in 3 to 4 weeks with a weight limit of 10 pounds, no repetitive motion or motion of the neck. (PX 8)

At her December 5, 2011 visit, he advised her to remain completely off work. (PX8) By letter dated December 5, 2011 Petitioner was advised her temporary total disability benefits were being terminated as of December 12, 2011, based upon Dr. Williams' examination and report. (PX 8)

On 1/30/2012, Petitioner saw Dr. Malek. Dr. Malek noted that Petitioner had only attended 2 weeks of physical therapy, after which she moved on to her home therapy program, which he stated "is not unreasonable." Dr. Malek noted that Petitioner complained of pain with changes in weather on left side, which he thought was going to be permanent. Dr. Malek stated that Petitioner was at maximum medical improvement (MMI) and gave her permanent work restrictions of lifting only 10 pounds 3-4 days/week, no repetitive motion of the neck & no repetitive motion of the upper extremities, no driving or operating heavy equipment and no work in vibratory environment. (PX 8)

Dr. Malek recommended that Petitioner undergo another x-ray of the cervical spine in 6 months, continue her home therapy program, continue her spinal fusion stimulator for 3-4 more months, and take medication as needed. (PX 8)

On 3/9/2012, Petitioner again saw Dr. Huang. Petitioner complained of neck pain with range of motion and requested a refill on her Norco. Dr. Huang gave Petitioner a prescription for Norco 10/325 mg. (RX 2)

On 7/30/2012, Petitioner again saw Dr. Malek. Petitioner stated that the surgery helped her significantly with her symptoms, although she still had a significant restriction with range of motion of her cervical spine. Dr. Malek noted that Petitioner had continued excellent clinical results. (PX 8)

### **Deposition Testimony of Dr. Williams and Dr. Malek**

Dr. Williams testified by way of evidence deposition on May 22, 2012. (RX1). He testified that he has been board certified in orthopedic surgery since 2008. He completed a spine fellowship in Indianapolis. Dr. Williams currently practices at the Orthopedic Center of Illinois in Springfield, Illinois. He testified that he only performs independent medical examinations once every two to three weeks. (RX 1, pp. 4, 5, 1, 44)

Dr. Williams testified that he had an actual, independent recollection of Petitioner from his November 7, 2011 exam. (RX 1, p. 25) Petitioner told Dr. Williams that she had suffered three injuries: a February of 2005 neck injury, an October of 2009 shoulder injury, and a July of 2010 neck injury. (RX 1, pp. 6-7) Dr. Williams testified that Petitioner did not report any other injuries to him, including injuries she reported to Respondent had occurred at work: a July 7, 1989 injury to her back, December 20, 1989 injury to her lower back, August 11, 1992 injury to her lower back and legs, January 13, 2006 injury to her neck, August 6, 2008 injury to her legs. (RX 9 and RX 1, pp. 7-9)

Dr. Williams testified that on her intake form, under the question: Did you have prior neck pain?, Petitioner checked "No." (RX 1, p. 48)

Dr. Williams also testified that Petitioner was asked to provide a complete surgical history. Dr. Williams testified that Petitioner did not report her breast augmentation surgery to him. (RX 1, pp. 9-10)

Dr. Williams testified that on November 7, 2011, Petitioner complained of neck pain and numbness and tingling in her fingers, worse on the right than left. (RX 1, p. 9) On his exam, Dr. Williams found good strength in Petitioner's upper extremities, no focal deficits, a soft and supple neck, a normal gait and no focal deficits with regards to neurologic function. (RX 1, p. 11)

Dr. Williams testified that he had reviewed Petitioner's physical therapy forms, operative reports, physician visits, radiology reports, and the actual radiographic studies. (RX 1, p. 12) After his examination of Petitioner and review of her records, Dr. Williams diagnosed Petitioner with chronic axial neck pain, C6-7 anterior cervical discectomy and fusion in 2005, C5-6 anterior cervical discectomy and fusion on September 29, 2010, C4-

5, C5-6, C6-7 anterior cervical discectomy and fusion on August 4, 2011, and cervical degenerative disc disease. (RX 1, p. 12)

Dr. Williams opined that Petitioner's diagnoses were related to her 2005 neck injury and surgery, not the 7/31/2010 "accident." (RX 1, p. 12) Dr. Williams opined that Petitioner was suffering from a phenomenon known as Adjacent Level Degenerative Changes, which typically occurs several years after the initial procedure was performed. (RX 1, p. 12) Dr. Williams stated that Petitioner's degenerative disc disease was also related to her genetic background, which Dr. Williams stated that Petitioner's prior, chronic lower back problems were further proof of Petitioner's genetic role in her neck condition. (RX 1, p. 13) Dr. Williams stated that if a person is having low back symptoms, it is expected that they will also have problems with the neck as well. (RX 1, p. 13)

Dr. Williams then specifically stated that Petitioner's C5-6 cervical fusion and subsequent C4-5, C5-6 and C6-7 cervical fusion revision were not necessitated by the 7/31/2010 "accident." (RX 1, 14). Additionally, Dr. Williams specifically opined that Petitioner's chronic neck pain and cervical degenerative disc disease was not caused by her 7/31/2010 work accident. (RX 1, p. 15) When asked on cross-exam if Petitioner's 7/31/2010 "accident" accelerated or aggravated her symptoms, Dr. Williams stated that it had not. (RX 1, p. 35) When asked on cross-exam if Petitioner's fusion at C5-6 and revision fusion at C4-5, C5-6 and C6-7 would not have been necessary but for the 7/31/2010 "accident" aggravating Petitioner's neck condition, Dr. Williams stated that they would have been necessary regardless of the 7/31/2010 "accident." (RX 1, p. 36) Dr. Williams stated that the 7/31/2010 "accident" did not accelerate Petitioner's cervical condition beyond the natural progression of her degenerative disc disease, but rather that Petitioner would have needed additional cervical fusion surgery regardless of what occurred on 7/31/2010. (RX 1, p. 36) Dr. Williams stated Petitioner's genetic degenerative changes and her prior surgeries were the cause of her current cervical condition. (RX 1, pp. 38-39)

Dr. Williams opined that if Petitioner was suffering from the symptoms of neck pain, headaches, numbness and tingling, and trouble sleeping prior to the 7/31/2010 "accident," that any herniation was therefore present prior to the "accident." (RX 1, p. 15)

Dr. Williams further testified that Petitioner did not need any further medical treatment. (RX 1, 16) Dr. Williams stated that Petitioner appeared to have fully recovered from her most surgery. (RX 1, p.16)

Dr. Williams testified that he was familiar with Petitioner's job duties as a certified nursing assistant, including the activity of lifting patients. (RX 1, 42) Dr. Williams stated that based on Petitioner's physical exam and her radiographic studies there were no objective findings that would necessitate any work restrictions. (RX 1, p. 16) Dr. Williams testified that a person with prior surgeries to the cervical spine would be a greater risk for new cervical injuries. (RX 1, p. 41) Dr. Williams also testified that Petitioner, like any person who had undergone a three level anterior discectomy and

fusion, had changes to the biomechanical function of her spine that would place her at a higher risk of having advanced degenerative changes occurring at adjacent levels. (RX 1, p. 18) Therefore, Dr. Williams stated that Petitioner may require further surgery because of her prior surgeries, but that Petitioner's physical findings and radiographs did not show any evidence that her activities needed to be limited. (RX 1, p. 18)

Dr. Williams testified that he needed additional information to determine whether the cervical surgeries performed on September 29, 2010 and August 4, 2011 were reasonable and necessary. (RX 1, p. 26) He testified that he would need additional information regarding Petitioner's symptoms prior to those surgeries and some of the radiographic studies completed prior to the studies. (RX 1, p. 27)

Dr. Williams continued that he was provided with medical records prior to his examination of Petitioner but did not know whether he was provided with all of the radiographic studies. He reiterated his opinion that he had no opinion whether the two surgeries of September 29, 2010 and August 4, 2011 were reasonable and necessary. He continued that Petitioner did not appear to be exaggerating her symptoms nor be a malingerer. Respondent's counsel questioned Dr. Williams whether Petitioner's weight could have contributed to her need for cervical surgeries. Upon cross-examination, Dr. Williams clarified that Petitioner's weight, estimated to be 125 pounds at five-feet-three inches tall, in no way contributed to her injuries. (RX 1, pp. 29-30, 46, 49-50)

Dr. Michel Malek testified by way of evidence deposition on August 29, 2012. (PX 21) He testified that he is a board certified neurosurgeon who has been licensed to practice medicine since 1985. (Id. at 5) He testified he was board certified by the American Board of Neurological Surgeons in 1997 and that this is a permanent certification. (Id.)

Dr. Malek testified he first treated Petitioner on June 6, 2011 and had an independent recollection of her. (PX 21, p. 9) He explained the history of the July 31, 2010 accident as provided to him by Petitioner. (Id. at 10-12) He testified that this accident aggravated or accelerated her underlying cervical condition. (Id. at 24) He explained that the accident compensated her condition aggravating and accelerating her underlying condition beyond the natural progression of her disease. (Id. at 23-24)

On cross-examination, Dr. Malek was asked by Respondent's counsel, "And you said it was unquestionable her symptoms were related to this incident (of July 31, 2010). And that's because Petitioner didn't have any of those symptoms prior?"

Dr. Malek responded, "No. It is not that finding – Petitioner was compensated before. Petitioner had had problems. Petitioner had the surgery, but Petitioner was able to work in a compensated position. And the injury basically precipitated that. And the fact that Petitioner had prior surgery at the one level does predispose her to having problems at the next level.

"So the injury of 7-31-10 is a cause of the condition, but on the background of somebody who already had surgery. So it is definitely a contributing factor, but it is not all of the injury or all of the problems related to that injury." (PX 21, pp. 44-45) He explained that a June 14, 2010 office note of Dr. Huang, which indicated dizzy spells and a positive Romberg test, were not significant in this case because the positive Romberg test was a test for cerebellar function, which is not related to her cervical spinal injuries. (PX 21, p. 57)

Dr. Malek stated that his opinion providing causation for the 7/31/2010 "accident," is based on Petitioner's prior history of being able to work without any problems, her mechanism of injury, the contemporaneous nature of the complaint, the finding of the physical exam, the finding on diagnostic testing, Petitioner's prior history of cervical spine problems with subsequent return to work, the intraoperative findings, and his education/training/experience as a neurosurgeon. (PX 21, 39-40)

Dr. Malek also stated that Petitioner's new onset of pain after the 7/31/2010 accident was shown by a subsequent diagnosis of disc herniation. (PX 21, 41) Dr. Malek described this new pain as radicular pain in her extremities, including pain in Petitioner's neck radiating into both upper extremities with tingling. (PX 21, 42) Dr. Malek stated that Petitioner was able to work without this pain prior to 7/31/2010. (PX 21, 42) Dr. Malek stated that at the time of Petitioner's 7/31/2010 injury, she was not under any active care. (PX 21, p. 47)

Dr. Malek stated that he had reviewed Petitioner's medical records from Springfield Clinic and Blessing Hospital. When presented with Dr. Huang's 5/19/2010 record where Petitioner complained of severe neck pain that made her unable to work, Dr. Malek was not able to explain the situation. (PX 21, 67-70) Dr. Malek also stated that it is possible that Petitioner did not have an acute injury on 7/31/2010, although he did not find it likely. (PX 21, 70-72)

Dr. Malek also reviewed medical notes of Dr. Tayag dated December of 2008, which indicated possible pseudoarthrosis. (PX 21, pp. 63-64) He explained with the symptoms discussed within those office notes were in line with his opinion that the accident of July 31, 2010, while not the cause in totality of Petitioner's condition, was a contributing factor. (PX 21, p. 66) He agreed that the records provided to him during his deposition confirmed Petitioner had a prior cervical condition. (PX 21, p. 67) However, he testified that the July 31, 2010 accident, "...tipped the precarious patient who was predisposed and was unquestionably a contributing factor in her subsequent care." (PX 21, p. 67)

Respondent's counsel also asked Dr. Malek whether it was possible that Petitioner did not actually sustain an acute accident on July 31, 2010. (RX 21, p. 70) Dr. Malek answered this was possible as, "Everything is possible. But likely, it's not likely at all." (Id.) He explained that all of her work at Respondent as a CNA was something that predisposed her but culminated in the specific event of July 31, 2010 that "tipped her over the edge and contributed unquestionably to her subsequent care and need for

subsequent care..." (PX 21, p. 71) He continued, "If Mrs. Laura Stephens was normal person eighteen years old with healthy spine, the injury of 7-31-10 would not have caused her problems. But because of her compromised background, then that injury was a competent cause of her requiring surgery and the treatment that Petitioner need." (PX 21, p. 72-73)

### **Petitioner's Arbitration Testimony**

Following her release with permanent restrictions by Dr. Malek, Petitioner testified she contacted Respondent to determine whether it would accommodate her. In a letter dated April 5, 2012, the State of Illinois Department of Veterans' Affairs notified Petitioner that it was in receipt of her permanent restrictions as provided to her by her physician. (PX19) It further notified Petitioner that her application for the Alternative Employment Program was denied and that Petitioner was left with only two alternatives: resign or retire, if eligible. (PX 19)

Petitioner began looking for work, which she documented in a job search log. (PX17) Her first entry in her job search log was dated March 19, 2012. The last entry in her log was August 15, 2012. During that time period, Petitioner documented applications to over 120 potential employers. Petitioner further documented six job interviews from those applications. (PX 17)

Petitioner testified she received two job offers but was not able to accept one because it was outside of her restrictions. Petitioner was offered another job at a travel agency but the offer was canceled due to another applicant being more qualified. Although her written job search logs ended in August of 2012, Petitioner testified she continued to look for work but got tired of writing it down all the time. Petitioner testified she continues to look for work on Job Finder, Career Builder, and other such internet sites. At the time of trial, Petitioner remained unemployed and looking for work. Petitioner testified that she has not received any assistance or offers to assist in her job search from Respondent but would accept it if provided.

### **The Arbitrator concludes:**

1. Petitioner sustained an accident on July 31, 2010 that arose out of and in the course of her employment with Respondent.

Although Respondent disputed accident at trial, it provided no testimony or other evidence to suggest that the accident did not occur exactly as described by Petitioner and as described throughout her related medical records. Petitioner's testimony regarding accident was credible as it was corroborated by the medical records and un rebutted. Petitioner was employed by Respondent in essentially a certified nurse's assistant position. She was injured while assisting a resident from a toilet to a chair using a Sara Lift. As Petitioner was holding a sling around the resident with her right hand, he reared back in his seat and caused her right arm to pull. Petitioner felt an immediate sharp pain go through her right shoulder and into her neck.



2. Petitioner's current condition of ill-being as it relates to her cervical spine is causally related to her work accident of July 31, 2010.

There is no dispute that Petitioner had pre-existing neck pain and problems as well as headaches. However, Petitioner's testimony about her prior medical condition was upfront and open. Petitioner's description of her symptoms, and their occasional nature, was corroborated by the medical records. As such, Petitioner's testimony was credible. While Petitioner had some periodic visits for neck pain and headaches between late May of 2006 and December of 2008, the medical records indicate she had no further significant treatment for such complaints until after the July 31, 2010 accident. The Arbitrator notes that Petitioner underwent physical therapy and work hardening as part of her recovery from her right shoulder injury in 2009. The therapist noted Petitioner was able to complete a three hour simulation of work activities without any problem. Petitioner returned to full duty work after that injury and continued in that capacity until this accident. She had no visits for her neck between that time and the work accident. While she may have taken medications to help alleviate symptoms, Petitioner was working full duty at a job which was quite physical and, again, she credibly acknowledged that she did experience occasional soreness and aches with her work. Even Dr. Tayag noted in December of 2008 that Petitioner's work aggravated her symptoms. (PX 1) Her explanation as to the difference in her symptoms before and after the accident on July 31, 2010 was very believable.

While Petitioner's visit with Dr. Tayag in December of 2008 might give some "cause for pause" regarding just what state Petitioner's neck was in at that time, the fact that Petitioner's MRI did not show pseudoarthrosis is noteworthy. Furthermore, Petitioner did not follow-up and seek any further treatment. She continued working full duty until injuring her right shoulder on October 16, 2009.

Respondent relies on Dr. Williams' opinions to refute causal connection. Dr. Williams, however, appears to be the only doctor believing that the accident of July 31, 2010 was not a contributing factor in Petitioner's current condition and he related everything to Petitioner's age and genetic factors, although he did not specify any particular genetic factors that would cause Petitioner's problems. While Dr. Williams did not believe Petitioner's condition was caused by her work accident, he never really discussed or explained with any real specificity why he disagreed with Dr. Raskas' opinion regarding an aggravation. He simply stated he disagreed. Similarly, on redirect examination he was asked to explain why an acute injury can result in an aggravation but it is only temporary. Dr. Williams testified that it is temporary because "typically" such patients go back to their baseline pain prior to their injury within a few months. (RX 1, pp. 45-46) Petitioner in this instance is not a "typical" patient. Dr. Williams did not adequately or persuasively address the question of aggravation.

However, every other medical doctor who commented on causation all related Petitioner's condition to her acute accident of July 31, 2010. Respondent initially sent Petitioner to Dr. Arndt who noted an assessment of "continued neck pain after acute injury at Illinois Veterans Home." At Petitioner's initial visit with Dr. Raskas on September 2, 2010, he summarized her July 31 accident and explained, "At this point, my impression is cervical pseudoarthrosis with new cervical disc herniation and myelopathy...directly related to her work injury." Similarly, at Petitioner's visit on July 5, 2011 with Dr. Riew, Dr. Riew indicated Petitioner's chief complaint was neck pain that started on July 31, 2010. He diagnosed her with pseudoarthrosis at the C5-6 and C6-7 levels and elected to contact the workers' compensation carrier to obtain authority for additional treatment, including surgery.

Dr. Michel Malek also testified extensively to show Petitioner's current condition of ill-being of her cervical spine was causally connected to her accident of July 31, 2010. While some of his testimony was somewhat confusing and exactly what he meant by the repeated use of the word "compensated" was not entirely clear, he nonetheless displayed an understanding of Petitioner's prior medical history in reaching this conclusion and his explanation as to an aggravation theory made sense. Dr. Malek was very clear that, although Petitioner had an underlying condition for which Petitioner had been treated for, the accident of July 31, 2010 aggravated and accelerated that condition. The Arbitrator accords greater weight to the opinions of Drs. Raskas, Riew, and Malek than to the opinion of Respondent's examiner, Dr. Williams.

Based upon the foregoing, the Arbitrator concludes that Petitioner's cervical spine injury is causally related to her work-related accident of July 31, 2010.

3. The medical services provided to Petitioner have been reasonable and necessary. Respondent has not paid all appropriate charges.

The overwhelming testimony and medical evidence in this claim supports the finding that Petitioner's cervical treatment following her accident through her visit with Dr. Malek on July 20, 2012 was reasonable, necessary, and causally connected to her accident.

At her initial visit on September 2, 2010 with Dr. Raskas, his impression was cervical pseudoarthrosis with new cervical disc herniation and myelopathy. He opined that the July 31, 2010 accident aggravated the pseudoarthrosis and also caused the herniated disc. Based on his recommendations, Respondent authorized this surgery. Dr. Malek confirmed this diagnosis throughout his testimony as well as the need for surgery to correct the condition. Respondent's expert, Dr. Williams, testified he was unable to provide an opinion whether this surgery was reasonable or necessary without additional information.

Petitioner's own testimony and related medical records confirmed that Petitioner felt relief from the tingling and numbness in her hands and arms and also that the

stabbing, sharp pains were diminished following her first cervical surgery with Dr. Raskas on September 29, 2010. However, her symptoms increased upon her return to light duty work in January and February, 2011.

Although Dr. Williams testified he was unable to provide an opinion whether the second cervical surgery following her accident was necessary, four other surgeons evaluated Ms. Stephens personally and reviewed her medical records and recommended it.

Drs. Raskas, Payne, Riew, and Malek all agreed that a second surgery was necessary due to the ongoing psuedoarthrosis following the initial surgery performed by Dr. Raskas. Dr. Malek confirmed during his testimony that the need for surgery was not related to anything done incorrectly by Dr. Raskas but was simply a surgery that did not work out as well as anticipated.

The second surgery was performed by Dr. Malek and his surgical assistant, which he confirmed was necessary for this surgery. The only opinions provided in this claim from the treating physicians or experts were that the treatment provided to Petitioner was reasonable and necessary. Therefore, the Arbitrator finds that medical services provided to Petitioner have been reasonable, necessary, and related to her accident of July 31, 2010.

For these reasons, Respondent shall pay reasonable and necessary medical services directly to Petitioner, pursuant to the fee schedule, of:

\$3,276.74 for Quincy Medical Group;  
 \$481.00 for Springfield Clinic;  
 \$66,301.00 for Dr. Michel Malek;  
 \$19,413.40 for United Surgical Assistants;  
 \$3,097.70 for Professional Imaging;  
 \$743.50 for Clinical Radiologists;  
 \$47.00 for Joliet Radiological;  
 \$10,274.13 for Our Lady of the Resurrection Hospital; and  
 \$220.00 for Washington University as provided in Sections 8(a) and 8.2 of the Act.

4. Petitioner was temporarily totally disabled from August 1, 2010 through January 7, 2011 and February 10, 2011 through January 30, 2012, a period of 73 4/7 weeks. Petitioner is also awarded maintenance benefits from January 31, 2012 through March 6, 2013, a period of 57 2/7 weeks.

The treating records entered into evidence by Petitioner at trial outline her ability to work following her accident of July 31, 2010 through her release from treatment with permanent work restrictions by Dr. Malek on January 30, 2012. Respondent did not present any medical evidence or testimony to negate the contemporaneous

medical opinions regarding Petitioner's work status throughout her course of treatment.

The Arbitrator has already concluded that Petitioner's need for treatment was causally connected to her work accident of July 31, 2010. The Arbitrator shall also rely on the opinions of Petitioner's treating physicians to award the TTD period requested.

Further, Petitioner credibly testified that she attempted to return to work for Respondent pursuant to the permanent restrictions provided to her by Dr. Malek. Her testimony that no position was provided to her was corroborated by Petitioner's Exhibits 18 and 19. Petitioner immediately began an extensive independent job search as documented by Petitioner's Exhibit 17. Because of her ongoing job search and permanent restrictions, Petitioner is entitled to maintenance benefits. The law is clear that an injured worker need not participate in a "prescribed rehabilitation program" in order to be entitled to maintenance benefits. *Greaney v. Industrial Comm'n*, 358 Ill.App.3d 1002, 1020, 832 N.E.2d 331, 348 (1<sup>st</sup> Dist. 2005). While Petitioner did not have job logs for her more recent searches, her testimony regarding her efforts was credible as she sounded and appeared sincere in her efforts to find same.

Per the stipulation of the parties, Respondent is given a credit of \$30,619.97 for TTD benefits paid.

5. Respondent shall authorize and provide an initial vocational rehabilitation assessment by a properly certified and qualified vocational rehabilitation counselor pursuant to Section 8(a) of the Act and Section 7110.10(a) of the Commission Rules.

The test for determining the appropriateness of vocational rehabilitation was laid out in the landmark case of *National Tea Co. v. Industrial Comm'n*, 97 Ill.2d 424, 454 N.E.2d 672 (1983). In *National Tea*, the Illinois Supreme Court held that a claimant is generally entitled to vocational rehabilitation when he or Petitioner sustains a work-related injury that causes a reduction in his or her earning capacity and there is evidence that rehabilitation will increase that capacity. 97 Ill.2d at 432, 454 N.E.2d at 676. Pursuant to Section 8(a) of the Act and Section 7110.10(a) of the Commission Rules, it is incumbent upon a respondent to provide a vocational assessment, vocational rehabilitation, and maintenance to a petitioner/claimant when it is apparent that the claimant will not be able to return to his or her former employment.

In recognizing the guidelines provided in *National Tea*, the Arbitrator notes, among other factors, that Petitioner is a viable candidate for, at minimum, an initial assessment. Petitioner has already demonstrated through her own testimony, medical records, the deposition of Dr. Malek, and Respondent's refusal to accommodate her permanent restrictions, that Petitioner is unable to return to her former work as a CNA. It further appears that Petitioner may benefit if provided assistance in regaining her loss of earning power and job security due to her accident. Petitioner was only forty-three years old at the time of her injury in 2010 and has a significant work-life expectancy remaining. Petitioner also demonstrated a willingness and eagerness to be

provided assistance in her job search efforts. Nothing in the record suggests that Petitioner is not employable. Indeed, she presented herself at arbitration as articulate, professional, well-groomed, and pleasant. She has a nursing background and while she may not be able to engage in certain physical aspects of her former position that does not necessarily mean there is not another possibility out there – albeit some training and education may be necessary.

Respondent has not offered to assist Petitioner to find suitable employment or otherwise assess the need for and/or provide any vocational rehabilitation. On her own, Petitioner has diligently pursued alternate employment following her release from medical treatment. Petitioner remains unemployed and in need of vocational rehabilitation assistance. Respondent shall provide a vocational rehabilitation assessment by a properly certified and qualified vocational rehabilitation counselor pursuant to Section 8(a) of the Act and Section 7110.10(a) of the Commission Rules.

\*\*\*\*\*

STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF COOK )

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Bronislawa Stekala,

Petitioner,

vs.

NO: 04 WC 60828

ABM,

**14IWCC0108**

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, notice, temporary total disability, permanent partial disability, medical expenses, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 19, 2012, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.



14IWCC0108

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 13 2014  
TJT:yl  
o 2/10/14  
51

  
Thomas J. Tyrrell

  
Kevin W. Lamborn

  
Michael J. Brennan





ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

**STEKALA, BRONISLAWA**

Employee/Petitioner

Case# **04WC060828**

**ABM**

Employer/Respondent

141-000108

On 12/19/2012, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.09% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0233 KENNETH B GORE LTD  
DONNA ZADEIKIS  
39 S LASALLE ST SUITE 1205  
CHICAGO, IL 60603

1120 BRADY CONNOLLY & MASUDA PC  
MARK F VIZZA  
ONE N LASALLE ST SUITE 1000  
CHICAGO, IL 60602

STATE OF ILLINOIS

COUNTY OF COOK

)  
14 IWCC 0108  
)

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/>            | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/>            | Rate Adjustment Fund (§8(g))          |
| <input type="checkbox"/>            | Second Injury Fund (§8(e)18)          |
| <input checked="" type="checkbox"/> | None of the above                     |

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION

**BRONISLAWA STEKALA**

Employee/Petitioner

v.

**ABM**

Employer/Respondent

Case # 04 WC 60828

Consolidated cases: \_\_\_\_\_

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Chicago**, on **11/07/2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?  
☐ TPD      ☐ Maintenance      ☒ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

## FINDINGS

On 12/02/2004, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the accident.

In the year preceding the injury, Petitioner earned \$20,280.00; the average weekly wage was \$390.00.

On the date of accident, Petitioner was 47 years of age, *married* with no dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$0.00 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$0.00 for other benefits, for a total credit of \$0.00.

Respondent is entitled to a credit of \$115,296.93 under Section 8(j) of the Act.

## ORDER

**Petitioner failed to meet her burden of proof regarding the issue of causation. Claim denied.**

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
\_\_\_\_\_  
Signature of Arbitrator

12/18/12  
\_\_\_\_\_  
Date

DEC 19 2012

14IWC0108

## Findings of Fact

The Petitioner testified that the last date she worked for the Respondent was December 4, 2004. She was employed by Respondent as a janitor. Her duties included cleaning office buildings. She would vacuum, mop and take out garbage. She had worked for 11 years prior to this for Respondent. On the date of accident, she was emptying garbage cans and pulling out a large, heavy trash bag when she fell backwards. She believes she had a loss of consciousness. She was taken to the emergency room. She was treated at Northwestern Emergency Room and she gave a history of hitting her head and back and having neck and low back pain. She also had pain that went down her left and right arms and down her right leg. They told her to follow up with her doctor. She was seen at Union Health, which was where her doctor was. She testified that before the accident, she had no low back pain and was able to do her job. She also testified that she had no history of depression before the accident. She was seen at Union Health on December 7, 2004. They gave her a brief exam and she treated with Mercy Works. She treated there on December 8, 2004, and December 27, 2004. On December 27, 2004, she told them she had blunt head trauma, and they told her she suffered a cervical strain with left radiculopathy and a lumbar strain with right radiculopathy. They kept her off work until January 5, 2005. She wanted to have physical therapy, but it was not authorized.

She returned to Union Health on January 10, 2005, and on January 19, 2005, they referred her to Dr. Nam, an orthopedic specialist. They then decided to refer her to a neurosurgeon. She was seen by Dr. Kayvanara, a neurosurgeon. A repeat CT and MRI were recommended. Then she began treating with Dr. Englehart at University of Illinois Chicago. He performed two surgeries on her spine: on December 7, 2005, a cervical discectomy, and on February 16, 2006, a lumbar fusion. He also performed a carpal tunnel release, which was not related. She had a follow-up with Dr. Englehart on March 15, 2007, and was having difficulty with her legs. Her spine is still bad. Pain radiates to her legs and she stopped feeling her left leg. She was seen by Dr. Slavin for a spinal cord stimulator. She had follow-up treatment from 2008 through 2012. She had pain in her upper back and lower back. She takes four to five Hydrocodone tablets a day. She has developed a new symptom where her feet get cold. She has pain in her back that travels through her head and both arms. Her low back pain goes down both legs. She wears a brace on her left leg, as she will fall without her brace. She has trouble walking more than half a block and does not use stairs. She cannot stand more than five minutes.

On cross-examination, Petitioner testified that she never had any prior problems to her neck or back. She has always had the cervical and lumbar pain.

The medical records show that the petitioner had neck pain as early as March 2004. At that time, her family doctor had noted that she was complaining of neck pain for three weeks. She was diagnosed with chronic neck pain in May 2004. In November 2004, she was treated for back pain. She noted at that time that her back pain was unbearable. She was also treated for depression and referred to a psychiatrist on November 24, 2004.

## Based on the foregoing, the Arbitrator makes the following conclusions:

Regarding the issue of causation, the Arbitrator finds that the Petitioner failed to meet her burden of proof. This finding is based primarily on the Petitioner's lack of credibility. Her testimony was clearly contradicted by her medical records. She testified that she never had any back pain or neck pain before this incident and had not treated for depression. The medical records from her family doctor indicate that her neck pain seven months before this was diagnosed as chronic, and less than a month before the accident, she was describing her back pain as unbearable. Further, it should be noted that the treating records indicate that there was a referral to a psychiatrist approximately one week before the incident.

14I7CC0108

The Arbitrator finds the opinions of Dr. Bauer both credible and persuasive. Dr. Bauer was the only doctor to review all the medical records. (RX 12) He noted her treatment in March and May 2004 for neck pain, which the Petitioner denied. The records of Accelerated Rehab show that on May 25, 2004, the Petitioner had a complaint of insidious onset of cervical pain, left worse than right, for about six months. On July 14, 2004, she was complaining of pain in her right lower leg. Dr. Bauer noted that a CT of the cervical spine was performed in December 2004 and showed a 2mm anterior listhesis at C3-4 secondary to moderate left facet hypertrophy. The CT scan also showed degenerative disc disease in the remainder of the lumbar spine. As Dr. Bauer noted, the Petitioner had a history of spinal stenosis as early as February 9, 2004. There is also reference to a 2003 MRI scan by Dr. Lesniak in his note of April 6, 2005. (RX 12) The petitioner complains of referred symptoms to both legs consistent with spinal stenosis. There are no acute abnormalities identified in either of the lumbar MRI scans or at the time of the spinal fusion. (RX 12) Dr. Bauer also noted that the findings on the MRI of December 20, 2004, would not cause left arm symptoms. (RX 12) The MRI of March 15, 2005, (RX 7) again revealed a slightly eccentric disc on the right at C5-6 and was interpreted as not causing nerve root compression on either right or left side. No acute disc herniation was identified by Dr. Englehart, and the osteophytes he found are of a chronic, degenerative nature. (RX 12) Dr. Bauer found that after review of the records and the operative reports, that the neck pain and osteophytes clearly preceded the incident of December 2, 2004. (RX 12) He notes that the herniated disc on the right at C5-6 which was found on the MRI would not have caused left upper extremity symptoms. (RX 12)

It is apparent from the reports that the surgeons did not have the benefit of the Petitioner's previous medical records, and therefore were unable to have the complete facts regarding the petitioner's histories in front of them. Therefore, any opinions they may have had regarding causal connection are flawed, due to the petitioner's less than candid history regarding her prior neck and low back problems. The medical records also note a worsening depression over the months of October and November 2004. (RX 1-3) Those reports also note that the Petitioner felt she was being discriminated against at work and that she was moved to a different building and did not like it. (RX 2)

Based upon the inconsistency between the Petitioner's testimony and her own medical records, the Arbitrator finds that Petitioner failed to meet her burden of proof on the issue of causation. Based on this finding, all other issues are rendered moot.



STATE OF ILLINOIS )

) SS.

COUNTY OF )  
WILLIAMSON☒ Affirm and adopt☐ Affirm with changes☐ Reverse☐ Modify☐ Injured Workers' Benefit Fund (§4(d))☐ Rate Adjustment Fund (§8(g))☐ Second Injury Fund (§8(e)18)☐ PTD/Fatal denied☒ None of the above

## BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Joseph Geyman,  
Petitioner,**14IWCC0109**

vs.

NO: 12WC 32505

SOI/Shawnee Correctional Center,  
Respondent.DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of nature and extent of Petitioner's permanent partial disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 15, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

DATED: FEB 14 2014

KWL/vf

O-1/14/14

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 Kevin W. Lamborn

  
 Daniel R. Donohoo

  
 Thomas J. Tyrrell



10/10/2023 10:10:10 AM

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

14IWCC0109

GEYMAN, JOSEPH

Employee/Petitioner

Case# 12WC032505

SOI/SHAWNEE CORRECTIONAL CENTER

Employer/Respondent

On 7/15/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0969 THOMAS C RICH PC  
#6 EXECUTIVE DR  
SUITE 3  
FAIRVIEW HTS, IL 62208

0502 ST EMPLOYMENT RETIREMENT SYSTEMS  
2101 S VETERANS PARKWAY\*  
PO BOX 19255  
SPRINGFIELD, IL 62794-9255

0558 ASSISTANT ATTORNEY GENERAL  
FARRAH L HAGAN  
601 S UNIVERSITY AVE SUITE 102  
CARBONDALE, IL 62901

0498 STATE OF ILLINOIS  
ATTORNEY GENERAL  
100 W RANDOLPH ST  
13TH FLOOR  
CHICAGO, IL 60601-3227

1350 CENTRAL MGMT SERVICES RISK MGMT  
WORKERS' COMPENSATION CLAIMS  
PO BOX 19208  
SPRINGFIELD, IL 62794-9208

CEATIFIED as a true and correct copy  
pursuant to 820 ILCS 305/14

JUL 15 2013



*[Signature]*  
KIMBERLY B. JANAS Secretary  
Illinois Workers' Compensation Commission

STATE OF ILLINOIS )  
 )SS.  
COUNTY OF WILLIAMSON )

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/>            | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/>            | Rate Adjustment Fund (§8(g))          |
| <input type="checkbox"/>            | Second Injury Fund (§8(e)(18))        |
| <input checked="" type="checkbox"/> | None of the above                     |

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION

**14IWCC0109**

Joseph Geyman  
Employee/Petitioner

Case # 12 WC 32505

v.

Consolidated cases: n/a

State of Illinois/Shawnee Correctional Center  
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Herrin, on June 13, 2013. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

**DISPUTED ISSUES**

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?  
☐ TPD      ☐ Maintenance      ☒ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

14IWCC0109

**FINDINGS**

On August 14, 2012, Respondent was operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship did exist between Petitioner and Respondent.

On this date, Petitioner did sustain an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned \$58,680.00; the average weekly wage was \$1,128.46.

On the date of accident, Petitioner was 42 years of age, married with 4 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

Respondent has not paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$amounts paid for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$0.00 for other benefits, for a total credit of \$amounts paid.

Respondent is entitled to a credit of amounts paid under Section 8(j) of the Act.

**ORDER**

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

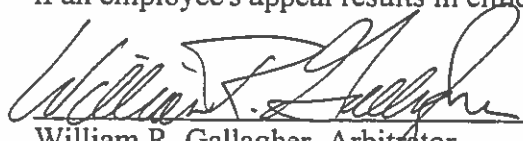
Respondent shall pay Petitioner temporary total disability benefits of \$752.31 per week for three and six-sevenths (3 6/7) weeks commencing November 22, 2012, through December 19, 2012, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability of \$677.08 per week for 48.375 weeks because the injuries sustained caused the 22 1/2% loss of use of the left leg as provided in Section 8(e) of the Act.

Respondent shall pay Petitioner compensation that has accrued from January 28, 2013, through June 13, 2013, and shall pay the remainder of the award, if any, in weekly payments.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
William R. Gallagher, Arbitrator  
ICArbDec p. 2

July 8, 2013  
Date

JUL 15 2013

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment for Respondent on August 14, 2012. According to the Application, Petitioner injured his left leg/knee while restraining an inmate. This case was previously tried in a 19(b) proceeding on October 24, 2012, and an award was written in favor of the Petitioner ordering the Respondent to pay medical and temporary total disability benefits. Respondent did not file a review of that decision so the primary dispute in this case is in regard to the nature and extent of permanent partial disability.

Dr. George Paletta performed surgery on November 29, 2012, the procedure consisting of a partial medial and lateral menisectomy of the left knee. Petitioner recovered from the surgery and Dr. Paletta opined that Petitioner could do home exercises and that a formal physical therapy program was not required. Petitioner was released return to work without restrictions effective December 20, 2012. Dr. Paletta saw Petitioner again on January 28, 2013, and noted that Petitioner had returned to work full duty and that all activities of daily living were normal. He opined that Petitioner had an excellent outcome, discharged him from care and stated that Petitioner was at MMI. Dr. Paletta did not provide an AMA impairment rating report nor was such a report obtained on behalf of the Respondent.

At trial, Petitioner testified that while he was able to return to work without restrictions, that when he stands for long hours, in particular, while at work on concrete surfaces, his knee hurts. Petitioner further testified that his knee pain has limited his ability to stay in shape and that he has limited his physical activities such as running and basketball. Petitioner continues to take over-the-counter medication on an "as needed" basis.

#### Conclusions of Law

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that all the medical treatment provided to Petitioner was reasonable and necessary and that Respondent is liable for payment of the medical bills associated therewith.

Respondent is to make payment of the medical bills identified in Petitioner's Exhibit 1 as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit for medical benefits that have been paid and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In regard to disputed issue (K) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner is entitled to temporary total disability benefits for three and six-sevenths ( $3 \frac{6}{7}$ ) weeks, commencing November 22, 2012, through December 19, 2012.

In regard to disputed issue (L) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner has sustained permanent partial disability to the extent of 22 1/2% loss of use of the left leg.

In support of this conclusion the Arbitrator notes the following:

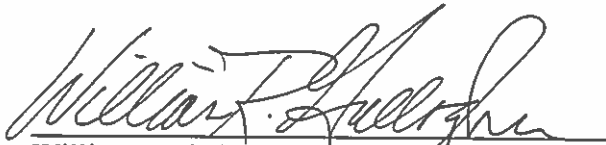
Neither Petitioner nor Respondent tendered into evidence an AMA impairment rating report.

At the time of the accident, Petitioner was a Correctional Officer, and his job duties required him to stand on his feet on a concrete surface for considerable periods of time, although not the entire working day.

Petitioner was 42 years of age at the time of the accident meaning that he will have to live with the effects of this injury for a considerable period of time.

Petitioner was able to return to work in his normal capacity so there is no evidence that this injury will have any effect on his future earning capacity.

The medical treatment indicates that Petitioner sustained tears to both the lateral and medial meniscus which required surgery. Petitioner credibly testified that he still has some symptoms and he has modified his level of activities as a result thereof.

  
William R. Gallagher, Arbitrator



STATE OF ILLINOIS )  
) SS.  
COUNTY OF COOK )

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <input type="text" value="down"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Bernard Butler,  
Petitioner,

vs.

NO: 04 WC 18116

McDaniel Fire System,  
Respondent.

**14IWCC0110**

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability, Section 8(j) credit, and nature and extent of the disability, and being advised of the facts and law, vacates the Arbitrator's award of credit to Respondent for \$8,910.40 for temporary total disability payments, modifies the award of Section 8(j) credit to include the \$8,910.40, and reverses the Arbitrator's finding of causal connection for the period after May 7, 2004. The Commission reduces the temporary total disability and nature and extent awards and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

On January 7, 2004, Petitioner, working as a union sprinkler fitter, descended a scissor lift, struck his right knee, and fell backwards, twisting that knee as he fell. Petitioner was diagnosed with a right medial meniscal tear and underwent arthroscopic surgery to repair the tear. On May 7, 2004, Petitioner reported to his surgeon, Dr. Luke, that he had no pain, he had full range of motion, and he could perform all of his activities. Dr. Luke released him to return to work without restrictions on that date.

Petitioner testified at hearing that when he attempted to return to work following his first surgery, Respondent advised him that he was laid off. He continued to work full duty as a union sprinkler fitter for different employers until October 16, 2005, when he retired and moved to Florida. On October 19, 2005, Petitioner sought treatment for his right knee with Dr. Schiappa, who performed a partial meniscectomy to repair a radial tear of the posterior horn of the medial meniscus on December 22, 2005. Dr. Schiappa causally related Petitioner's condition to his work accident in 2004, found his condition was permanent, and suggested a total knee replacement might eventually become necessary. Petitioner testified at hearing that his right knee is painful and he uses a cane.





14IWCC0110

Prior to hearing, the parties stipulated that Respondent was entitled to Section 8(j) credit for medical expenses paid by Respondent's group health insurer and disability payments made by its group non-occupational disability insurer. At hearing, the parties stipulated that Respondent was entitled to Section 8(j) credit for disability payments made in the amount of \$8,910.40, that the related medical expenses totaled \$42,411.59, and that Respondent's group health insurer had paid \$40,807.26 toward the medical expenses.

Arbitrator Thompson-Smith entered her Decision on February 6, 2013, and Petitioner filed a "Motion to Recall Arbitrator's Decision" on February 28, 2013, seeking correction of the PPD rate and Section 8(j) credit award. The Arbitrator granted Petitioner's Section 19(f) Motion and filed her Corrected Decision on April 9, 2013, modifying the PPD rate as requested and revising the paragraphs of the Decision pertaining to credit for Respondent's or its insurer's payments. Respondent appealed on the issues of accident, causal connection, medical expenses, temporary total disability, Section 8(j) credit, and nature and extent of the disability.

Temporary Total Disability Credit. At hearing, the parties stipulated that Respondent was entitled to Section 8(j) credit of \$8,910.40 with respect to TTD payments. However, on the Request for Hearing form presented prior to trial, the parties stipulated that Respondent had paid no TTD or maintenance. In both her original and corrected Decisions, the Arbitrator notes that "Respondent shall be given a credit of \$0.00 for TTD, \$8,910.40 for TPD, \$0.00 for maintenance, and \$0.00 for other benefits, for a total credit of \$8,910.40," and in her Order finds that "Respondent shall receive a credit of \$8,910.40 for payment of temporary total disability pursuant to Section 8(b) of the Act." Pursuant to *Walker v. Illinois Workers' Compensation Commission*, 345 Ill. App. 3d 1084, 804 N.E.2d 135, 138, 281 Ill. Dec. 509 (4<sup>th</sup> Dist. WC 2004), the Request for Hearing is binding on the parties as to claims made therein, and Respondent is bound by its stipulation that it had paid no TTD or maintenance benefits. Moreover, there is no evidence in the record to support the Arbitrator's finding that Respondent paid \$8,910.40 in disability benefits, and the parties stipulated on the record at hearing that Respondent was entitled to a Section 8(j) credit of \$8,910.40 for disability payments. Tr. 10. Therefore, the Commission strikes the following paragraph of the Arbitrator's Order of her Corrected Decision: "Respondent shall receive a credit of \$8,910.40 for payment of temporary total disability pursuant to Section 8(b) of the Act."

Section 8(j) Credit. Arbitrator Thompson-Smith found that Respondent was entitled to Section 8(j) credit of \$46,717.66. The amount appears to be the sum of the medical expenses paid by Respondent's group health insurer (\$40,807.26) and the net amount paid to Petitioner by Respondent's group disability insurer (\$5,910.40), according to Respondent's Exhibit 4. However, pursuant to the parties' stipulation on the record (Tr. 10), Respondent was entitled to a Section 8(j) credit of \$8,910.40 for payments made by its disability insurer. That amount, when added to the group health payments, totals \$49,717.66 in Section 8(j) credit. The Commission vacates the Arbitrator's award of \$46,717.66 in Section 8(j) credit to Respondent and increases the credit to \$49,717.66.



14IWCC0110

Causal Connection. Arbitrator Thompson-Smith found that Petitioner's second right knee surgery was causally related to his January 7, 2004 work injury and found Respondent liable for all temporary total disability and related medical expenses through February 20, 2007. Respondent argued on appeal that Petitioner's condition of ill-being at the time of hearing was not causally related to his work accident. It noted that Petitioner's surgeon found him at maximum medical improvement and returned him to full duty work on May 7, 2004. Petitioner worked full duty for different employers for 19 months before seeking additional treatment for his right knee. Respondent argues that all treatment and lost time after May 7, 2004 is not causally related to Petitioner's January 7, 2004 work injury.

Petitioner offered the causation opinion of his second surgeon, Dr. Schiappa, who causally related his condition and need for his second surgery to the January 7, 2004 accident. Respondent argues that Petitioner never returned to the first surgeon after his release and continued to work full duty for 19 months before seeking treatment. The Commission notes that Dr. Schiappa admitted that he had not reviewed Petitioner's medical records, did not know whether Petitioner had taken pain medications during the period between his release by Dr. Luke and his initial appointment with Dr. Schiappa, and did not inquire whether Petitioner had sustained a second injury following his first surgery. Given these omissions, the Commission finds that Dr. Schiappa's causation opinion is entitled to no weight. Moreover, an MRI performed on February 11, 2004, shortly after the first accident, revealed Petitioner's medial tear that was repaired by Dr. Luke, but not the radial tear surgically addressed by Dr. Schiappa. Based upon the gap in treatment from May 7, 2004 to October 19, 2005, on Petitioner's ability to work full duty for 19 months following his release by Dr. Luke, and upon Petitioner's failure to provide a credible causation opinion, the Commission finds that Petitioner reached maximum medical improvement on May 7, 2004. All subsequent treatment and temporary total disability are not causally related to his January 7, 2004 work accident, and the Commission finds that Respondent is not liable therefor.

The Commission further reduces the Arbitrator's permanency award from 35% to 20% loss of use of the right leg.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's finding that Respondent paid Petitioner \$8,910.40 in temporary partial disability benefits is vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to credit in the amount of \$49,717.66 under Section 8(j) of the Act; provided that Respondent shall hold Petitioner harmless from any claims by providers of the benefits for which Respondent is receiving credit under this order.



14IWCC0110

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of \$888.00 per week for 11-6/7 weeks, commencing January 8, 2004 through January 9, 2004 and February 14, 2004 through May 6, 2004, as provided in §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner all reasonable and necessary medical expenses incurred prior to and including May 7, 2004. All subsequent medical treatment is found not causally related to Petitioner's January 7, 2004 injury.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner the sum of \$550.47 per week for a period of 43 weeks, as provided in §8(e) of the Act, for the reason that the injury sustained caused the loss of use of 20% of the Petitioner's right leg.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

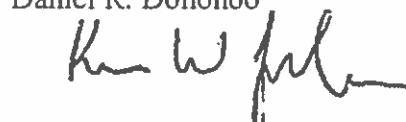
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

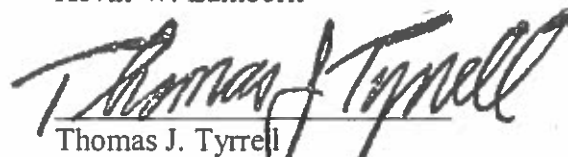
Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at \$12,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 14 2014

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drd/dak  
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Daniel R. Donohoo

  
Kevin W. Lamborn

  
Thomas J. Tyrrell



ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION  
CORRECTED

**BUTLER, BERNARD**

Employee/Petitioner

Case# **04WC018116**

**McDANIEL FIRE SYSTEMS**

Employer/Respondent

**14IWCC0110**

On 4/10/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.09% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0226 GOLDSTEIN BENDER & ROMANOFF  
DAVID Z FEUER  
ONE N LASALLE ST SUITE 2600  
CHICAGO, IL 60602

0532 HOLECEK & ASSOCIATES  
STUART PELLISH  
161 N CLARK ST SUITE 800  
CHICAGO, IL 60601



STATE OF ILLINOIS )  
 )SS.  
COUNTY OF COOK )

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

**ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION CORRECTED DECISION**

**Bernard Butler**  
Employee/Petitioner

Case # **04 WC 18116**

v.

Consolidated cases:

**McDaniel Fire Systems**  
Employer/Respondent

**14IWCC0110**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Peterson and Thompson-Smith, Arbitrators of the Commission, in the city of **Chicago**, on **February 24, 2010 and December 7, 2012**. After reviewing all of the evidence presented, the Arbitrator, Lynette Thompson-Smith hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

**DISPUTED ISSUES**

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☒ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☒ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

## FINDINGS

On **January 7, 2004**, Respondent *was* operating under and subject to the provisions of the Act.  
 On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.  
 On this date, Petitioner did sustain an accident that arose out of and in the course of employment.  
 Timely notice of this accident was given to Respondent.  
 Petitioner's current condition of ill-being *is* causally related to the accident.  
 In the year preceding the injury, Petitioner earned **\$69,264.00**; the average weekly wage was **\$1,332.00**.  
 On the date of accident, Petitioner was **49** years of age, *married* with **1** dependent child.  
 Petitioner has received all reasonable and necessary medical services.  
 Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services.  
 Respondent shall be given a credit of \$0.00 for TTD, \$8,910.40 for TPD, \$0.00 for maintenance, and \$0.00 for other benefits, for a total credit of \$8,910.40.  
 Respondent is entitled to a credit of \$40,807.26 under Section 8(j) of the Act.

## ORDER

Respondent shall be given a credit of \$46,717.66 for benefits that have been paid pursuant to Section 8(j) of the Act and Respondent shall hold petitioner harmless from any claims by providers of the services for which Respondent is receiving this credit.

Respondent shall receive a credit of \$8,910.40 for payment of temporary total disability pursuant to Section 8(b) of the Act.

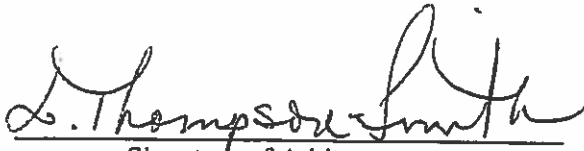
Respondent shall pay Petitioner temporary total disability benefits of \$888.00 per week for 76 3/7 weeks, commencing 1/8/2004 through 1/9/2004; 2/14/2004 through 5/6/2004; and 12/10/2005 through 2/20/2007, as provided in Section 8(b) of the Act. Respondent shall pay Petitioner the temporary total disability benefits that have accrued from January 8, 2004 through February 20, 2007, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall pay reasonable and necessary medical services of \$42,411.59, awarded to the petitioner, less Respondent's Section 8(j) credit, pursuant to Sections 8(a) and 8.2 of the Act, where applicable.

Respondent shall pay Petitioner permanent partial disability benefits of \$550.47/week for 70 weeks, because the injuries sustained caused the 35% loss of the right leg, as provided in Section 8(e) of the Act.

**RULES REGARDING APPEALS:** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE:** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
 Signature of Arbitrator

April 9, 2013

APR 10 2013

## FINDINGS OF FACT

The disputed issues in this matter are: 1) accident; 2) causal connection; 3) notice; 4) temporary total disability; 5) nature and extent; and 6) medical services and bills.

Mr. Butler testified he is now retired, living in Florida. He formerly resided in Chicago.

On January 7, 2004, he was employed as a union sprinkler fitter working at McDaniel Fire Systems. Near break time, as he was coming off of a scissor lift, he missed one of the receded steps and struck his right knee on the flat end of the scissor lift. He fell backwards, twisting his right knee.

Mr. Butler denied having any prior injuries to the right knee and continued his full-time work on January 7, 2004. He testified that he spoke to a co-worker, Anderson Evans, about his knee the day that he injured it and that unrebutted testimony was corroborated by Mr. Anderson Evans when he testified. Mr. Evans testified that he witnessed the accident and approached the petitioner to inquiry whether or not he was injured. *See*, Tr. Pgs. 12-13; 57-58.

The next day, he called and spoke with Mr. Anderson Evans, asking him to call the project manager, Dave Stevens, to inform him he that his knee was sore and would not be in work that day. Mr. Butler testified he did not call Mr. Stevens because he did not have his phone number. *See*, Tr. Pgs. 14-15 & 57-58.

Mr. Butler returned to full-time work on January 9, 2004. He returned to full-time employment, with no restrictions, working as a union sprinkler fitter at the University of Illinois parking garage project. He subsequently worked full-time at the Northeastern University project. While working at both of these projects, he was not wearing any braces on his right knee.

Mr. Butler testified his right knee became progressively more painful. He sought out medical care for the first time on January 27, 2004. He presented to Dr. DeSilva and Petitioner acknowledged that he did not tell Dr. DeSilva of a work-related accident regarding his right knee. At a subsequent visit, Petitioner was directed to undergo an MRI of the right knee. It was only after the MRI on February 16, 2004, which showed a bone bruise, or a micro-trabecular fracture and a meniscus tear, did the petitioner acknowledge that, for the first time, he spoke with one of the superintendents from McDaniel Fire Systems, informing him of the January 7, 2004 occurrence. Mr. Butler acknowledged up until that time, he had not filled out an accident report regarding a work-related accident

and his explanation was that he did not think that he had hurt his knee that badly.

Dr. DeSilva referred the petitioner to Dr. Kevin Luke, who diagnosed him as having suffered a tear of the medial meniscus in his right knee. On March 2, 2004, Dr. Luke performed an arthroscopic surgery, repairing a tear of the medial meniscus and subsequent to surgery; and Petitioner remained under his care. At his last visit with Dr. Luke, on May 7, 2004, Petitioner informed Dr. Luke that he had no complaints of pain or any problems with his right leg. On physical examination, Dr. Luke noted Mr. Butler had full range of motion of his right leg and commented that Petitioner was up and ambulating without any external aids. Dr. Luke asked Mr. Butler to heel-walk, toe-walk, and squat. Petitioner was able to perform all of these activities. Dr. Luke directed Mr. Butler to return to full-time work and no restrictions were imposed.

At his attorney's request, Mr. Butler was examined on June 26, 2004, by Dr. Barry Lake Fischer. Dr. Fischer reviewed medical records and took a history from the petitioner. He performed a physical examination and it was his opinion that Petitioner had sustained a sprain injury to his right knee resulting in internal derangement, requiring surgical intervention.

Dr. Fischer opined there was a relationship between Petitioner's condition of ill being on June 26, 2004 and the work-related accident of January 7, 2004 and that Petitioner's condition of ill being had reached a state of maximum medical improvement.

After receiving the full-duty release from his treating surgeon in May 2004, the petitioner continued to work for the next nineteen (19) months as a union sprinkler fitter. He worked full-time, for various contractors at various jobs. All of his job assignments were obtained through his union hall and he continued working, in a full duty capacity, with no restrictions, as a union sprinkler fitter, until October 19, 2005.

The petitioner testified that he developed pain and swelling in his right knee and in December of 2005 he presented to Dr. Schiappa, who related this present right knee condition to the accident of January 7, 2004. On December 22, 2005, Dr. Schiappa performed a partial meniscectomy to the right leg, after an MRI which showed a radial tear of the posterior horn of the medial meniscus. The doctor further opined that because of the two (2) surgeries, the petitioner developed an arthritic condition that inhibited a full recovery. Dr. Schiappa testified that the petitioner's condition was permanent and that if the pain became intolerable, he should consider a total knee replacement. The last visit to Dr. Schiappa was February 20, 2007, when the petitioner was advised "not to return to his original job."

Petitioner testified that when he was released to return to work on May 7, 2004, the respondent informed him that he was laid off. He sought employment elsewhere and worked for approximately one year; ending his career as a union sprinkler fitter on October 19, 2005. He testified that he has not gone to work for any employer since retiring and moving to Florida. He is presently receiving a retirement pension from the union. He further testified that his knee is painful and that he needs to use a cane to ambulate.

Mr. Anderson Evans testified that he is a union sprinkler fitter who was working with Mr. Butler on January 7, 2004; and that he and Petitioner are friends. He observed Petitioner coming down from the lift and twisting his leg as he was getting off. Mr. Evans testified he observed the petitioner limping at break time on January 7, 2004. Mr. Evans further testified that Mr. Butler called him on January 8, 2004, telling him he was unable to come to work because of his knee and requested that he notify Mr. Stevens, their supervisor. Mr. Evans testified he spoke with Mr. Stevens on January 8, 2004, informing him that Mr. Butler had hurt his knee, on the job and would not be coming to work on that date.

**CONCLUSIONS OF LAW**

**C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?**

The Arbitrator concludes Mr. Butler suffered a compensable accident on January 7, 2004. Respondent argues Mr. Butler did not suffer an accident, as the first notification of a work-related accident did not occur until more than a month after the incident. Respondent further argues that the petitioner continued full-time work without verbalizing any complaints of a work-related accident, problems to his knee or seeking medical attention. Thus Respondent argues Mr. Butler's testimony of an accident should not be believed. Based on the corroborating testimony of Mr. Evans, the Arbitrator concludes that the petitioner suffered an accident, at work, on January 7, 2004, when he missed one of the steps while exiting the scissor lift.

**E. Was timely notice of the accident given to Respondent?**

The Arbitrator finds that both witnesses, i.e. the petitioner and Mr. Evans testified that Petitioner requested that Mr. Evans notified the respondent's agent that he injured his knee, at work, and would not be coming in, the day after the accident. This testimony is unrebutted therefore; the Arbitrator finds that the Respondent was given timely notice of the accident, pursuant to the Act. It was Petitioner's unrebutted testimony that on February 16, 2004, he personally notified one of the superintendents from McDaniel Fire Systems, informing him of his January 7, 2004 accident; which was within the forty-five (45) day statutory requirement.

**F. Is Petitioner's current condition of ill-being causally related to the injury?**

The Arbitrator concludes Mr. Butler suffered a tear of the medial meniscus in his right knee, which caused internal derangement to the right knee. The Arbitrator further concludes that the necessity for the March 2, 2004 surgery was related to the January 7, 2004 accident. The Arbitrator bases her decision on the opinions of Drs. Fischer and Luke and Petitioner's treating doctors. At his last visit with Dr. Luke, on May 7, 2004, the petitioner informed Dr. Luke he was having no complaints of pain, nor any problems with his right leg. On physical examination, Dr. Luke noted that Petitioner had full range of motion of his right leg and commented that Petitioner was up and ambulating without any external aids. Dr. Luke asked him to heel-walk, toe-walk, and squat and he was able to perform all of these functions. Dr. Luke directed Mr. Butler to return to full-time work and no restrictions were imposed. Also, on June 26, 2004, Dr. Fischer opined that Petitioner's condition of ill being had reached a state of maximum medical improvement.

However, Petitioner testified that he again developed pain and swelling in his right knee and in December of 2005 and presented to Dr. Schiappa; who related this present right knee condition to the accident of January 7, 2004. On December 22, 2005, Dr. Schiappa performed a partial meniscectomy to the right leg, after an MRI which showed a radial tear of the posterior horn of the medial meniscus. The doctor further opined that because of the two (2) surgeries, the petitioner developed an arthritic condition that inhibited that knee from full recovery. Dr. Schiappa testified that the petitioner's condition was permanent and that if the pain became intolerable, he should consider a total knee replacement. The last visit to Dr. Schiappa was February 20, 2007, when the petitioner was advised "not to return to his original job." The Arbitrator concludes that Petitioner's current condition of ill-being is related to the work injury.

**J. Were the medical services that were provided to Petitioner reasonable and necessary and has Respondent paid all appropriate charges for all reasonable and necessary medical services?**

On May 7, 2004, the physical examination of the treating surgeon, Dr. Luke, determined that Petitioner was able to ambulate without external aids and able to heel-toe walk and squat. The doctor stated that Mr. Butler's condition had reached maximum medical improvement on May 7, 2004. At such time, Mr. Butler had no complaints of pain or problems. He was released to return to work in a full duty capacity. He had a full range of motion of the knee. He was discharged from medical care by his treating orthopedic surgeon. Also, Petitioner's expert Dr. Barry Lake Fischer, who examined Mr. Butler one month later, concluded similarly, that the condition of Mr. Butler's knee had apparently, reached a state of permanency. However, Dr. Schiappa, upon re-examination and additional diagnostic tests revealed a second meniscus tear and opined that this second right knee condition was related to the accident of January 7, 2004.

On December 22, 2005, Dr. Schiappa performed a partial meniscectomy to the right leg, after an MRI which showed a radial tear of the posterior horn of the medial meniscus. The doctor further opined that because of the two (2) surgeries, the petitioner developed an arthritic condition that inhibited a full recovery. The Arbitrator having examined the treating medical records and the testimony of Petitioner concludes that both surgeries were necessary and reasonable and related to the work accident.

The parties have agreed to the information contained in Petitioner's Exhibit Number 4 with respect to the medical providers, the dates of service, co-payments by Mr. Butler and payments by the group health carrier. The Arbitrator awards Petitioner all necessary and related medical services incurred for the right knee from January 27, 2004 through February 20, 2007; with Respondent given an 8j credit for amounts paid.

**K. What temporary benefits are in dispute?**

Respondent shall be given a credit of \$40,807.26 for benefits that have been paid pursuant to Section 8(j) of the Act and Respondent shall hold petitioner harmless from any claims by providers of the services for which Respondent is receiving this credit.

Respondent shall receive a credit of \$8,910.40 for payment of temporary total disability pursuant to Section 8(b) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of \$888.00 per week for 76  $\frac{3}{7}$  weeks, commencing January 8, 2004 through January 9, 2004; February 14, 2004 through May 6, 2004; and December 10, 2005 through February 20, 2007, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services directly to the petitioner, of \$42,411.59, less payments made by Respondent, as provided in Sections 8(a) and 8.2 of the Act, where applicable.

**L. What is the nature and extent of the injury?**

The Arbitrator concludes Mr. Butler suffered a 35% loss of use of his right leg. Petitioner has failed to prove, by a preponderance of the evidence, that he is permanently, totally disabled.